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OF LAW
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THE SANCTITY OF LAW

IN WHAT DOES IT CONSIST?

THE STORY OF MAN'S ATTAINMENT OF
LAW AND ORDER FROM ROMAN
TIMES TO THE PRESENT

BY

JOHN W. BURGESS, PH.D., J.U.D., LL.D.



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TO THE MEMORY OF THOSE BRAVE AND LOYAL
MEN OF MARYLAND, WEST VIRGINIA, KENTUCKY,
TENNESSEE AND MISSOURI, WHOSE FIDELITY TO THE
UNION DURING THAT TERRIBLE PERIOD OF STORM
AND STRESS FROM 1861 TO 1865, UNDER CONDITIONS
WHICH TRY AND TEST THE STOUTEST HEARTS AND
NATURES, CONTRIBUTED MIGHTILY TO SAVE THIS
CONTINENT FROM DISMEMBERMENT SUCH AS IS THE
PLAGUE AND CURSE OF EUROPE TODAY, THIS LITTLE
VOLUME IS DEDICATED BY ONE WHO WAS PERSON-
ALLY WITNESS TO THEIR STEADFASTNESS, THEIR
VALOR AND THEIR WORTH.

THE AUTHOR

PREFACE

When, in the year 1923, I asked, through the Columbia University Press, the indulgence of the reading public of this country in my expression of a few thoughts upon the changes wrought by the war of 1914-1919 in our constitutional law and practice, I firmly believed that it was the last communication which I should ever make to those who had been my pupils in this great subject, or to anybody else. But between that date and now so many inquiries have come to me concerning the apparently growing disregard for law and order, so many demands for an explanation of this disquieting situation, not alone in this country but throughout the world, that I have persuaded myself to take the pen in hand once more and to treat the question of the Sanctity of Law with some fullness, from the points of view of history and philosophy as well as of political ethics. I shall avoid anticipating my treatment of the subject in a preface or introduction, but would simply prepare the minds of my readers, in some degree, for the *bouleversement* which usually attends the passing of an era.

There is little question in the mind of the close observer of events that man, in the most civilized portions of the earth, is today passing from the theological to the scientific era in regard to the subject dealt with in this little volume. Throughout these same portions of the earth the scientific method of the acquisition of truth has already conquered the domains of mathematics and physics, and any attempt to control individual thought upon those subjects through legislation, business

boycott, or social ostracism only provokes a smile of derision on the part of those who have any understanding of the scientific movement of the last half-century. We are now confronted with the same movement in politics and law. It has been groping about for a century and a half, first in darkness, then in twilight, and then in the dawn; and now the light of the morning is beating upon it and urging a statement of its meaning in language comprehensible to the mass of men. First efforts in this direction can only be approximations to anything like completeness, and will not advance far except under the methods of fullest tolerance in investigation and discussion. The slinging of slogan and the hurling of epithet, to say nothing of restrictive legislation or the pressure of social control, must not presume to discredit free inquiry; nor shall an exaggerated patriotism be invoked against the same, which would be as fatal to the attainment of truth in polity and law today as was an exaggerated faith to a knowledge of astronomy three centuries ago. In addition to the strenuous labor of original research the scholar of today ought not to be burdened with the defense of his freedom of thought and expression if the best results are expected of him. He should not be forced to become a revolutionist in order to be allowed the privilege of doing the thinking for his fellow men.

With this understanding between me and my readers, I will plunge at once into the heart of the subject.

THE AUTHOR

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Our little systems have their day ;
They have their day and cease to be :
They are but broken lights of thee,
And thou, O Lord, art more than they.

TENNYSON

THE SANCTITY OF LAW

IN WHAT DOES IT CONSIST?

CHAPTER I

THE MEANING OF LAW

The thing of first importance, yea, the entirely indispensable thing, in the beginning of every treatise is to give the reader a clear, distinct, and discriminating idea of the meaning of the subject to be treated—not the meaning in a general way, conveyed through the categories of a general definition, but the exact, precise, and particular meaning attributed to it by the author himself. The failure to do this always results, naturally and necessarily, in the production of a confusion of mind on the part of the reader, no matter how profound a student or thinker he may be, which is injurious to, if not destructive of, any further understanding of the problem dealt with.

There is no subject more exposed to such a fate than the one with which I am now attempting to deal. As a fair example of the truth of this statement let us take the book on the subject of law, until recently the most widely known of all others in the English-speaking world—"The Commentaries" of Sir William Blackstone.

For a hundred and fifty years almost every English and North American student of law began his career with the study of this book and generally suffered ever there-

after from the confusion of mind produced by it regarding the meaning of law. Sir William commits the fundamental error at the outset of employing the term "law" to express at least four greatly differing concepts: namely, the commandments of a supernatural power, if any such there be; the forces of nature; the behests of conscience; and, finally, the rules of civil conduct. It is true that he does make some discrimination between the term as applied to one of these concepts and as employed in designating the others, but the mere use of it in all these different spheres of existence and activity is productive of loose and inexact thinking. I shall endeavor in this treatise to avoid all these linguistic snares by using the term "commandment" to designate the expression of the divine will (if such there be), the word "behest" to describe the requirements of conscience, and the term "force" to explain the movements and evolutions of nature. I shall thus be able to reserve the name "law" for those rules of civil conduct imposed by some man or men on other men and, maybe, on themselves also.

Sir William was, indeed, careful to point out that he used the term in different senses, and that its meaning as treated in his "Commentaries" was, in his own language, "the rules of civil conduct prescribed by the supreme power in a state *commanding what is right and prohibiting what is wrong.*" But a close analysis of this definition will make it immediately manifest that the noted jurist mixed and confounded the ethical with the legal, to say nothing of the religious and the physical. He says law commands what is right in civil conduct and prohibits what is wrong. Now right and wrong are, in first instance, ethical concepts or, maybe, divine revelation and command. It is quite possible that a rule of civil conduct prescribed by the supreme power in a state may command what is wrong and prohibit what is right. It has

done so throughout history time and again. Is it any the less law for that? If so, then where is the authority and power, outside the state itself, to determine what is right and what is wrong, and to excuse disobedience to the law and warrant resistance against its enforcement, in case such authority should determine that the rule of civil conduct prescribed by the supreme power in the state is wrong or against right? These nine words in this definition open up to us at one fell blow the whole question of constitutional interpretation, of revolution and rebellion. The only way, as I see it, to rid the definition of this embarrassment is to cut these nine words out of it altogether, as not belonging to the etymology of the law. It would then read, "Law is a rule of civil conduct prescribed by the supreme power in a state."

But with this we run against another question fully as knotty and fully as difficult of comprehension; namely, How does a rule of civil conduct prescribed by the supreme power in a state differ from any line of human conduct required by the church (or any church), or by an ethical society, or recommended by an individual philosopher or moralist? As I understand it, the crucial difference is in what lawyers call the sanction, the physical punishment attached to disobedience of the prescribed rule, and executed by the governmental agents of a state upon human beings subject to the jurisdiction of said state.

Here, again, we come upon a number of fundamental terms expressing fundamental concepts which need careful explanation; for instance, what is meant by the word "state," how and by whom is it constituted, where does it get or derive its authority to prescribe rules of civil conduct and punish physically any human being disobeying them, what is the difference between civil conduct and other kinds of conduct, how are the geographical or other possible limits determined

within which the particular state may exercise such jurisdiction, etc.? These will be the topics to be considered in the succeeding chapters of this work.

But here I must dwell a little upon a few considerations necessary to the full comprehension of the claim that the essence of law is the sanction, the physical punishment through which it is enforced. Let us begin with the religious theory for the control of conduct. It is contended that the rules of conduct laid down by any Christian organization or teacher are not simply recommendations which men may follow or not as they will and without suffering any penalty for disobeying them, but that there is a hereafter for the souls, if not the resurrected bodies, of men where they will be temporarily or eternally punished for such disobedience. There certainly is in such a doctrine, when thoroughly and widely believed, a tremendous power of control. As we shall see later, it has kept peace and order for long periods in vast portions of the earth and has promoted charity and brotherly love when there was nothing else or little else to rely on. Whether it be a truth of revelation or a scientific fact or a mere theory of the imagination we need not consider. We have only to contrast the results of this doctrine in reaching and preventing the commission of deeds made criminal or wrongful by law, but which the hand of the law often fails to reach, with the influence (or rather lack of influence) in this direction of religions which teach no such doctrine—for example, Buddhism with its Nirvana, its eternal oblivion or absorption after death—to be profoundly convinced of the vast work for civilization which the fear of Satan, hell, and its punishments has wrought.

Conceding all this, however, willingly and even thankfully, we still submit that there is a distinction between a physical punishment imposed and executed by one man or group of

men upon other men, here upon earth, regardless of whether the sufferer or sufferers recognize the legitimacy of the imposing authority or the rationality of the punishment, and a sanction working only through the influence of fear upon the mind of the sufferer of experiencing in a possible future existence something like these pains and penalties, at the hands of an imaginary being, whose power for evil is irresistible and unconquerable. The results may be the same in determining the conduct of a man in a given situation, yea, may even be more effective in the latter case than in the former; still, the difference in the means effecting the result obtains and is sufficient to distinguish what we are calling divine commandment from law as a rule of civil conduct.

Again, moralists of a number of the world's eras contend that the behests of conscience are so strong on the part of many persons (and ought to be in the case of all) that the conviction of having done wrong will produce physical injury, even to such a degree as sometimes to produce death. They go so far as to assert that the mere entertaining of malicious feelings without the commission of any overt act often results in physical suffering and disaster. As before, it is not necessary for us to enter upon any line of argumentation to prove the truth or falsity of these propositions. We may simply admit the probability of their verity. We may ourselves even assert that these conscientious scruples are, especially in persons of the highest and purest character, a greater deterrent from the commission of wrong than the penalties of the law, and that as men advance in the development of real intellectuality and sound ethical sense the behests of conscience may be relied upon in higher and ever higher degree to keep order in the world and the reign of human mutuality.

But, with all this, we may and must again take the position

that there is a clear distinction between the punishments which a fine moral nature may impose upon itself for the doing of wrong, in fact or in contemplation, and those physical penalties which one man or group of men may impose and execute upon others—a distinction so palpable as to serve as a scientific discrimination of sufficient strength to vindicate our contention that the essence of the law, in correct definition, is to be found in the sanction.

Finally, about all modern scientists hold that there is an irresistible force in nature (that is, in all existence) which pursues a line of development and evolution determined by itself; and that any and all attempts to thwart its action do, will, and must result in physical injury to any person, as well as to any so-called inanimate thing, even to the point of annihilation. From this proposition they draw the perfectly logical and entirely inevitable conclusion that as men develop intellectually they will seek more and more to understand how this great force works in every direction, whether we term it physical, social, or ideal, and to put themselves in all their activities in accord with its movements and do what is possible to assist in their more and more perfect and unhampered realization.

Admitting all this as truth, still we must hold the ground that the punishments which nature inflicts upon persons for defying its evolutions are not of the same category as those which one man or group of men assume to impose and inflict on other men. The difference between the two is still so great as to leave the sanction in the latter sense the real discriminatory element in the definition of the law.

Turning over again in mind the points we have attempted to elucidate, it becomes quite manifest that we may eliminate some parts of Blackstone's definition of the law, with great benefit in our search for a clear understanding of the term.

Tentatively, we may say that law is a rule of civil conduct prescribed by the supreme power in a state and enforced by the infliction of physical punishment upon all persons subject to the jurisdiction of the given state who disobey the same.

This is still, however, a bungling proposition which we shall undertake to clear still further of superfluities and ambiguities. In the first place, what is meant by the phrase "the supreme power in a state"? If it be supreme, then there can be nothing above it which can control it in prescribing the conduct of men. In other words, it is what we call in political science sovereignty, original, unlimited, universal authority and power in determining and enforcing the rules of conduct of men subject to its jurisdiction. We may therefore discard the qualifying adjective "civil" in the definition, since it would be a function of the sovereignty itself to draw the line between civil conduct and religious, or moral, or social, or any other kind of conduct, and in the uncontrolled exercise of such a power the sovereignty might ignore any such distinctions altogether. As a second approximation to a more simple and intelligible definition we may therefore say that law is a rule of human conduct prescribed by a sovereignty, either directly, or indirectly through some body authorized by it thereto, and enforced by the infliction of physical punishments for disobedience to the same on the part of any person subject to its jurisdiction.

It may be questioned why, if sovereignty is unlimited authority and power, it is necessary to use the limiting adjective "physical" in description of the punishments which it may inflict,—why it may not employ also nonphysical penalties. The answer to this query is that in making nonphysical punishments effective, sovereignty must probably, in last instance, use physical sanction. Take, for example, the case where sovereignty should order its subjects to punish one of

their number by ostracism and boycott on account of his dissenting opinion on any question : how could sovereignty make this order effective except by having recourse, in last instance, to physical punishment should its subjects simply ignore the order? In other words, such an order without physical sanctions to back it up would be merely a recommendation, not a law at all.

The one thing which still remains obscure in the definition as last formulated is the term "sovereignty." How does it come about that one man or a group of men have the original, unlimited authority to prescribe the rules of conduct for other men and the power to enforce obedience to these rules by the imposition of physical punishments? This is the profoundest question of political history and political philosophy and will be the chief topic of discussion in the body of this treatise.

With this ultimate definition of law, as the rules of human conduct prescribed by sovereignty and enforced by physical punishments, let us consider at this point very briefly what we mean by the sanctity of law. We shall, after getting a clear idea of this term, have the necessary understanding of our theme to proceed with its discussion. The two words "sanction" and "sanctity" proceed out of a common-root idea. They both involve the notion of a compelling power over the minds of men, the latter of somewhat more spiritual or intellectual nature than the former. It is, therefore, that quality or those qualities in the law which constrain the mind of the citizen-subject to obedience. In ultimate analysis they are, generally speaking, two in number : namely, the conviction of the legitimacy of the source of the law and, secondly, of the rationality of its content.

In the earlier eras of civilization and the more primitive conditions of man the first consideration was by far the most important. During such eras men seemed only to ask the

question whether the law to which their obedience was demanded had proceeded from legitimate authority, and if it was found to have done so, in their opinion, they submitted to its execution without much question as to the nature of its content. When men began to study the content of the law and to gauge their obedience to it by the rationality of its provisions, then the sun of revolution was beginning to illumine the horizon, and a new era in civilization was soon to dawn. It can easily be, however, that too great stress will be placed upon this element in determining the sanctity of law, and that such radical excess will lead to anarchy. We must not, however, in this preliminary chapter anticipate the minute treatment of this theme. We have a long and winding way to travel before we arrive at this stage in the evolution of legal sanctity—one necessary, however, to its real comprehension.

CHAPTER II

THE EFFORT OF THE ROMAN EMPIRE TO SOLVE THE QUESTION OF THE SANCTITY OF LAW

So far as the history of Europe is concerned, we find that the first really conscious attempt, on a large scale, to cope with this great problem was made naturally by the Roman Empire, in its Constantinian era. To understand clearly this great movement, its promise of success and its final failure, we must sketch briefly the evolution of the Roman political civilization from the beginning to its downfall.

It is probable, yea, a little more than probable, that a band of hunters with their women and children in rude military organization, under the lead of a chief who had proved himself the most capable among them, made their way from the forests north of the Alps, slowly across that barrier, down into the middle peninsula of southern Europe in search of a milder climate in which to form a settlement, somewhere during the half century between 800 and 750 B.C. They found an existing, or fragments of an existing, population wherever they went, and when they settled down on the banks of the Tiber such beings became immediately subject to the winners as servants or slaves.

After settlement there emerged gradually such rude organizations as may be thus described: the chief of the band at the time of settlement continued to give directions to his followers, who at first assembled themselves in two bodies, one composed of the elders or fathers of families, subsequently called the senate, and the other composed of all the

grown-up males of the band, afterwards named the *comitia curiata*. The subjected population found in this undefined territory had at the outset no organization. The senate protected its members and those represented by it against those commands of the chief which it regarded as unwarranted by custom and usage, and the *comitia* did the like for its members and those represented by it. The chief's commands not vetoed by either of these bodies were regarded, therefore, as having the sanctity of law as determined by the legitimacy of its source. Of course, the tenure of the chief was also an element, a prime element, in the establishment of the legitimacy of his commands. After the settlement this tenure, which probably had its origin in superior capacity to lead, became a matter of choice by the two bodies, probably acting separately, for an indefinite term. The commands, therefore, of such a leader only, not vetoed by either of these assemblies, had the full legitimacy of law.

For some two hundred years this settlement on the Tiber (which took the name of Rome) struggled along with this system of legal organization. The growth of the population, both within the original limits of the settlement and by the continuous extension of the same, continually introducing new, unrepresented elements in either the senate or the *comitia curiata*, produced the movement for the creation of another assembly which would contain them. In this they were aided by the *Princeps*, who generally saw his own interest in union with the larger number, which would almost always accept his leadership as against the patricians, who, though few in number, had severally a policy each of his own. Such a combination was bound sooner or later to succeed.

It did succeed under the reign of the sixth prince, or king, *Servius Tullius*, who met this situation by the creation of a

new comitia called the comitia centuriata, composed of all the arms-bearing men subject to the jurisdiction of the city both within and without its original limits. This brought some twenty thousand men into the electorate of the new assembly, which was recognized as having the power of veto over the edicts of the prince affecting the members of that electorate, similar to that exercised by the senate and comitia curiata in behalf of those represented in these bodies. Law, now viewed from the legitimacy of its source, was the royal edict which had not been, within a given time, vetoed by either of the three assemblies.

It soon became evident, however, that this was not satisfactory. In the first place, it was difficult to come to an agreement about the time within which a veto should be valid. In the second place, the new assembly contained, as did the others, large numbers of the patricians, who, because of their superior intelligence, education, and experience, exercised a power of control entirely out of proportion to their numbers. This was clearly manifest by the fact that when the patricians observed the approach of the king to the plebeians, they actually secured the abolition of the kingship and substituted for the king two consuls.

The cleverness of their politics is seen in their conceding the election of both consuls to the comitia centuriata, to be taken, however, from among the patricians and confirmed by the other two comitia. These bodies now *made* the law instead of vetoing it when formed by the Princeps, and the excessive influence of the patrician order in each of them carried the day generally. It was useless practically to require that no capital sentence should be executed by any magistrate upon any Roman citizen until the same should have been ratified by the comitia centuriata, as provided by the *lex Valeria* of 509 B.C., since the patricians, by their superior

cleverness, managed the comitia centuriata, and the law was executed by patrician consuls and their appointees.

The plebeians must find some way to protect themselves against patrician law through officials in sympathy with themselves. This was the purpose of the revolt of the plebeian soldiers in 493 B.C., which was pressed with such great vigor and persistence as to extort from the patrician-ruled assemblies the *lex sacrata*, which provided for the creation of tribunes of the people and invested them with the power to protect any citizen against the arbitrary acts of any magistrate. They themselves were not magistrates nor officials strictly speaking at all, but popular representatives, and their person was made sacred by the *jurandum* sworn between patricians and plebeians, calling down the curse of the gods on anyone violating it. Who should determine when the act of the magistrate was to be considered arbitrary was not fixed in the law, and naturally the tribunes claimed that function and were sustained in it by those whom they represented. The patricians, on the contrary, held that the pontiffs and augurs were the interpreters of the will of the gods and were the natural ones to exercise this power, but these, again, were all patricians appointed by the patrician assemblies.

The tribunes themselves, at first two in number and then increased to ten, were originally elective in a sort of mass meeting of the plebeians; but they themselves soon came to see that they needed something to back them up both as a council and an electorate in the nature of an assembly, and they secured by popular pressure the *lex Publilia* of 471 B.C., which gave legal legitimacy to a comitia tributa which had been organized chiefly by the tribunes during the ten preceding years. This new assembly contained only plebeians representing plebeians, but was inclined to claim the authority of determining when the acts of a magistrate against a plebeian

should be regarded as arbitrary. It also was made the electorate of the tribunes and was authorized to vest them with the power of executing its resolutions. Naturally the patrician magistrates were not inclined to admit the doctrine that the *comitia tributa* was the body in the Roman Constitution for determining the powers of the government over against the rights of the people; and the struggle over this question led to the formation of what is known as the Twelve Tables in Roman constitutional history, defining in general terms the civil liberty of the individual citizen, which the tribunes might protect in favor of the plebeians. This occurred around the year 450 B.C.

Not satisfied with the position of the *comitia tributa* and the tribunes, the plebeians now demanded that in the *making* of law the *comitia tributa* should have a part. They won their contention in so far that their *plebiscita* became binding as law on both patricians and plebeians after the senate had fixed the sanction to them, as in the case of the resolutions of the other assemblies. They were able to effect this because the jurisdiction of the Roman government now extended over more than twenty settlements, only four of which were represented in the existing assemblies.

With this victory the plebeians pressed on for eligibility to the magistracies, beginning at the top, and in the *lex Licinia* of the year 367 B.C., or around that date, were admitted to the consulships and then, of course, to all other offices. They were now in a position to free the *plebiscita* of the *comitia tributa* from the sanction of the senate before they became law. This was attained in the latter part of the third century B.C. With this the acts of the *comitia tributa* acquired the sanctity of law from the point of view of the legitimacy of their origin.

The development of the Roman government had now reached the stage of a double-headed monster: the consuls

with the senate and comitia curiata and centuriata controlled by the patricians, and the tribunes with the comitia tributa controlled by the plebeians. A modern political scientist will find difficulty in seeing how such an organization could operate at all and how its commands could have any compelling influence over the minds and wills of men. Nevertheless, it was with such a system, in theory at least, that Rome conquered the world from the Euphrates to the Atlantic and from the Danube to the African wastes. But it was only in theory; in fact the senate of patricians with their consuls, proconsuls, prætors, prefects, and military commanders carried on this hundred and fifty years of conquest, and the tribunes and the comitia tributa kept quiet. It is not impossible that the patricians brought on this era of foreign wars and perpetuated it in order to restore and maintain their control of the government.

But this period was obliged to come to an end; and the new subjects of Rome, so vast in numbers, must cease to be objects of plunder and must be assigned to a place in the state. Naturally they chiefly fell into the ranks of the plebeians; and so we find a great plebeian tribune,—Tiberius Gracchus,—about 133 B.C., attempting to restore the powers of the comitia tributa and the tribunes and losing his life by the dagger of the assassin in the attempt; and ten years later the same effort being put forth by his brother Gaius, with the same result; and still ten years later the same movement instituted by the great soldier Gaius Marius, which this time met with some success and paved the way for the coalition of the great triumvirate of Pompey, Crassus, and Julius, and then for the imperium of Julius and after him of Octavian on the basis of the democratic comitia tributa and tribuneship worked by means of the military command.

The result was, however, a military dictatorship, and the

compelling power of the law was the military force at the command of the Princeps. About 12 B.C. he was recognized as the Pontifex Maximus; that is, as the chief priest of all the different religions professed throughout the vast empire. This would seem to the modern political scientist to have furnished the vantage ground from which the Princeps might have evolved a theory of divine sanction to his commands and have thus relieved them of the brutal aspect of mere military orders; but neither Octavian nor his successors made anything of consequence out of it. And so this pseudo-democratic, military Cæsarism worked along for more than three hundred years under an exterior which was indeed far harsher in appearance than in the reality of its operation, but which for the lack of a compelling power of a religious or moral nature over the spirits of men was bound, sooner or later, to lead to a catastrophe.

During all this latter period there was being organized the institution destined to bring this about—organized throughout every nook and corner of the vast empire, even in the city of Rome, right under the eyes of the Augustus Cæsar himself. It was the Christian religion and the Christian communities, known later as the Christian Church. Toward the end of the first century after Christ it became current gossip in the city that a new religious sect had appeared there from the Orient (the great home of religions), which held its meetings in secret, had no priests, did not recognize the Cæsar as Pontifex Maximus while living and did not apotheosize him after death.

Here were a number of points violative of the law. The secret meetings were forbidden by the police regulations of the city of Rome, the refusal to regard the Cæsar as Pontifex Maximus was rebellion, and the failure to worship the apotheosized Cæsars as gods was a crime against majesty. All

these things invited prosecution, which history has termed *persecution*; and the best, the ablest, and the noblest of the Cæsars were the severest of the prosecutors, since they, above all the rest, held it to be their duty to execute the laws of the Empire. During the first quarter of the fourth century it became fully manifest, however, that the prosecution, or persecution (whichever it may with most propriety be termed), had driven almost everybody into the new religious organization and that the imperial government itself was facing the crisis of its own existence. Happily the existing Cæsar, Constantine the Great, understood the situation and took prompt measures to meet it.

In their developing organization the Christian communities had reached the stage of union known as bishoprics. Of these there were some two thousand in the Empire, each presided over by an officer entitled *bishop*. Constantine called these officers together in general council at Nicæa in the year 325. More than three hundred of them answered his call and, with priests and acolytes amounting to four times as many more, gathered together under his presidency, settled the creed of the church, and fixed some points in its organization.

Here, again, as it appears to the modern political scientist, was the opportunity to have won a spiritual basis for the origin of law. Why, he queries, did not the emperor, when making the Christian religion the state religion,—the exclusive state religion,—proclaim himself the Pontifex Maximus of the new cult, the organ through which the God of this religion revealed his will to man? Why did he not thus gain the sanctity of divine commands for his laws? We know that the Roman emperors worked out no such origin of their laws, but it is really not easy to explain why they did not. A few reflections, however, may help us to understand it in a measure.

In the first place, the Christians had from the beginning and during the entire period of their persecution by the most powerful emperors, such as Trajan, Marcus Aurelius, Septimius Severus, and Diocletian, persistently and uniformly refused to recognize the emperor as their Pontifex Maximus; and although it could be claimed that there was after 325 a difference between the office of Pontifex Maximus of the one sole state religion and the office as understood before that date in its application to a large number of religions regardless of their orthodoxy, still the principle of discrimination between church and civil office had become so profoundly fixed in the consciousness of nearly all Christians as to bring to naught any attempt of the Cæsars having for its purpose the establishment of a claim on their part that through their office as Pontifex Maximus they transmitted God's will to men for their government. It was pretty well fixed in Roman thought of that era that where the power existed to execute law, *there* was to be found the authority to make it, and that was in the commandership-in-chief of the military, the emperor's chief prerogative.

Moreover, the Christian Church itself, if we may use that title to designate the totality of substantially independent religious communities termed bishoprics to the number of some eighteen hundred or two thousand, had not arrived at an organization which could carry to the minds of men the appearance of an organ for the revelation of the divine will for the government of men. In its existing stage of development the Christian Church had only arrived at the institution of the Council of Bishops as its highest organ. Such an organ reached its conclusions through debate, often fierce and passionate, and vote; and such scenes and experiences are not easily reconcilable in the minds of ordinary men with the idea of such a body's being an organ for the revelation of the

divine will. Several new stages in the development of the Christian Church toward a much greater centralization had to be made before the establishment of an organ could be effected having the necessary character of an institution for the continuing revelation of the divine will. This was a development, however, which the nature and circumstances of the Roman Empire were not fitted to accomplish. The ancient world had completed its cycle. The old civilization was worn out. New peoples at the beginning of their development had to take the stage, peoples so backward in the evolution of logical thought that fiction and feeling could sway and control them in the production of results otherwise utterly unattainable.

CHAPTER III

THE CAROLINGIAN EMPIRE AND ITS DEPENDENCE UPON THE POPE'S AUTHORITY

The removal of the capital of the Roman Empire from the city of Rome to the newly founded city of Constantinople in the latter half of the fourth century, and the setting up of the system of the co-emperorship in Ravenna or Milan for the western half of the Empire—leaving the city of Rome practically under the government of the bishop of Rome, who had, by the aid and encouragement of the emperor, become the sole patriarch of the Christian Church in the western half of the Empire—had by the beginning of the fifth century brought Italy and the whole of this western part of the Empire into a very rickety condition, and had laid it open to conquest by the restless tribes roaming through the territory of Europe north of the Alps or to gradual penetration by them, as peaceable movements of occupation are now sometimes called.

During the fifth and sixth centuries this was what happened. The various Teutonic tribes—Ostrogoths, Visigoths, Vandals, Lombardians, Alemanni, Franks, and others—worked usually slowly forward into the provinces of the Empire and into Italy itself, settling largely as they went and reducing the lands occupied to cultivation and ownership, entering the ranks of the Roman soldiery and in many cases the official corps, and even becoming in some instances Roman magistrates. This relatively peaceful character of the

great migration explains why it required centuries rather than decades to complete itself.

There was one notable exception, at least, to this quasi-peaceable method of advance, which had most important results in the development that we are following. It was the campaign of Odoacer at the head of his Goths around the years 475-476 against the co-emperor at Ravenna, his expulsion of the co-emperor's government from Ravenna, and his assumption of government over Italy and, perhaps farther, himself. Strange as it may seem to us now, the Emperor Zeno at Constantinople approved the acts of the Gothic chief and made him his agent for the government of Italy and of other western provinces in the place of the co-emperor. The title conferred upon Odoacer was Exarch, and it might very easily have been held to mean the agency of the imperial government for the entire West. This claim, however, brought Odoacer into contact with the Roman governor of Gaul having his seat at Soissons, one Syagrius, who was not inclined to recognize the superior authority of Odoacer over the entire west of the Empire.

At this critical moment the Salian Franks under their Merwing chief, Clovis, a youth in years but a mature man in wisdom, were advancing southward and westward up the valley of the Somme; and when Syagrius went over to open revolt against the overlordship of Odoacer as the Roman Emperor's exarch in the West, Clovis led his Franks against the rebel, overthrew him, and proclaimed his own loyalty to the emperor and his exarch in Ravenna. This led to his own government being recognized as legitimate north of the river Loire by the Roman Emperor.

Not satisfied with this, however, Clovis set to work to place himself in rapport with the bishops of the Christian Church and, above all, with the bishop of the Roman diocese, the

Patriarch of the western branch of the Church. In fact, he had formed this policy before the important events of the year 476 just described had taken place, and during this same year the total conversion of the Salian Franks to Christianity—orthodox Christianity, the Nicene, Athanasian Christianity—was proclaimed. With this Clovis and his Franks became the defenders of the Western Church and the Church became the upholder of the legitimacy of his government. Clovis was now king of the Salian Franks, proconsul of the Roman Emperor over Gaul, and defender of orthodox Christianity in the Western Roman Empire.

In the latter capacity he had a popular religious and moral support against both the Empire and his Frankish tribesmen, which would protect him mightily against any possible attempt of either of these forces to deprive him or his descendants of the chieftaincy of the Franks. The legitimacy of the Frankish king was being made firm and fixed and sacred by these forces, and the succession of his descendants to the throne by the rule which he had fixed—namely, succession in the male line—was being completely confirmed. The chief weak spot was failure to distinguish between office and property, and therefore the division of the political power as if it were land between the male descendants of the king. The result of such a rule was obliged to be the division of Europe into petty states connected only by the family relationship of the chiefs and the supergovernment or sovereignty of the Roman Emperor. This was the tendency of western Europe in the year 500.

In 511 Clovis, king of the Frankish tribes, proconsul in Gaul, and defender of the orthodox Christianity in the Western Roman Empire,—the master mind which had conceived this combination of authorities for giving the sanctity of law to his edicts,—passed away, and the destructive custom of

succession to the Frankish chieftaincy, which he had not been able to reform, caused the division of the great political structure, which he and his ancestors had built up, among his four sons, as if it were the landed property of the family. The destruction threatened thereby to his great work for organizing Europe was temporarily averted, however, by the death of three of them without descendants, leaving Chlotaire I as sole ruler. This happy accident for the preservation of the unity of the kingdom and of western Europe was again disturbed by the early death of Chlotaire I and the division of the Merwing state among his sons.

It was at this moment that the great officials whom the king had appointed for administering his government, the great landholders, and the Christian bishops began to scent the danger to their powers, offices, and properties contained in the continual threat of the division of the royal authority among the sons of a king. Under the leadership of a powerful landlord—one Pippin of Landen—and a powerful bishop—Arnulf of Metz—the aristocracy of the kingdom as personified in the great landlords, civil officials, and ecclesiastics was organized and took its stand for the unity of the Frankish kingdom, the rule of primogeniture in the male line in the succession to the royal power, and government limited by themselves in behalf of their own rights. The idea of office as something distinct from property made thus a great stride forward in this so-called Constitution of Chlotaire II of the year 615, and also of law as proceeding from sovereignty instead of from power only.

However, this development was bound to proceed slowly and to be subject to many reactions. For instance, one of the provisions of this constitution recognized the continuance of the division of the kingdom for the purposes of government into a western, northeastern, and southern part—Neustria,

Austrasia, and Burgundy, in each of which the king should rule through a separate personality, entitled Mayor of the Palace, Majordomo, elected by the great landlords and bishops in each division. It is not difficult to understand that such an arrangement might, if exaggerated in its application, lead to a more and more complete independence of the three parts until they should become independent sovereignties. In fact, within ten years from the establishment of this constitution this tendency manifested itself in Austrasia through a demand on the part of the body of nobles there, which had formed itself out of the great landlords, officials, and bishops, on King Dagobert, who had made Paris his capital, to send his son Sigebert into Austrasia, place him under the supervision of Pippin and Arnulf, and authorize him to place the royal sanction upon the measures which they might propose.

It was only a step or two more in the same direction which would lead to the substitution of the Pippins for the Merwings, first in the east and then in the west and south. This came to pass during the last quarter of the seventh century. The nobles of Austrasia chose Pippin of Heristal, grandson of Pippin of Landen, their chief or duke, and by military power he forced the Merwing king to confer on him the majordomship in Neustria and Burgundy. He thus reunited the entire Frankish kingdom; and from this vantage ground his descendants—Martel, Pippin the Short, and Charlemagne—created the Holy Roman Empire of the German Nation and gave the first great European solution to the question of the sanctity of law from the point of view of the legitimacy of its origin. We must therefore follow with more detail the development from this point.

To the minds of these three great chieftains the desired result could be effected only in understanding with the bishops

of the Christian Church, and especially with the bishop of Rome. The situation of the European ecclesiastical world which gave rise to this conviction in the minds of these princes was in brief outline as follows: Athanasian Christianity had become the firmly settled state religion of the whole of middle and western Europe by the coöperation of individual belief with the legislation of the later Roman Empire and the conversion of the German tribes penetrating the territory of the Empire, especially the Franks. The teachers of it had the entire control of all intellectual activity, thought, and faith. Whatever they should universally inculcate would be held, and was held, by practically all men to be the truth, the divine truth, imparted by divine revelation through the clergy for the guidance of all men.

In the next place, the organization of the Christian Church in middle and western Europe had, as elsewhere, reached the stage of the episcopate; that is, the clergy within the districts of civil administration of the Roman Empire, and then the Frankish kingdom, were subject to supervision and control by an overseeing prelate in each entitled the *Episcopos*, the bishop. Still further these bishops had been (chiefly by the policy of the Roman emperors after Constantine the Great) associated together in five great districts called patriarchates, and of these districts the whole of middle and western Europe composed but one, and the patriarch of that one was the bishop of Rome. The chief powers of this bishop as patriarch of the entire Western Church was to appoint archbishops and vest them with authority to organize the bishoprics into archbishoprics and to supervise the episcopal administration in the bishoprics. These powers, however, when upheld by the secular government, were amply sufficient to give the bishop of Rome a position of supremacy in the Church in middle and western Europe to which the title Pope,

universal *Papa*, might with propriety be given. At this very moment, also, the Christian civilization of Europe was being threatened by the invasion from Africa of the vast Moslem power which had penetrated the southwestern peninsula almost to the Pyrenees and seemed to be gathering strength as it advanced. It seemed that spiritual influence alone would not now save the Christian Church against the onslaughts of the Mohammedan hosts, who not only wielded military weapons but were themselves ensouled by a great religious enthusiasm.

The Church and the bishop of Rome as its chief representative could not rely upon the Roman Emperor at Constantinople for protection against this really terrible danger. He was too far away, and, moreover, he was at that very moment engaged in strife with the bishop of Rome over the then hotly waged question of image worship in the churches. And lastly the government of the bishop of Rome over the city and the territory round it was being threatened by the advance of the Arian Lombards from the valley of the Po across the Apennines. The Pope, the archbishops and bishops, the lower clergy, and the laity almost to a man recognized the necessity of the Church's acting as a unit and with the support of a great military power; and the really profound statesman who held the office of duke of the Austrasian Franks and majordomo in Neustria and Burgundy, Pippin the Short, saw in this situation and in this trend of opinion the opportunity for displacing the Faineant Merwings and for his own elevation to the throne of the united Frankish kingdom. He appealed to the bishop to transfer the crown from the Merwing to himself, and offered his sword in defense of the bishop and of the united church under his control.

The bishop replied promptly, and commanded St. Boniface, the archbishop of Metz, to anoint Pippin as king of the

Franks. One year later (in 753) he himself went across the Alps, reanointed Pippin as king of the Franks in the cathedral at Reims, and conferred on him, furthermore, the office and title of Patrician of the City of Rome; that is, of defender of the city and of the bishop's government therein and in the territory surrounding it.

As we have seen, this was at this very moment threatened by the Longobardi from their base at Ravenna. To free the bishop from this impending menace, the new king crossed the Alps in the year 755, drove the Longobardi out of Ravenna and the entire exarchate, and bestowed it and some five or six other urban districts upon the bishop as secular governor, making up, then, with Rome and the territory immediately around it, the later named States of the Church.

For fifteen years more now these new relations were settling down into a system of European sovereignty, government, and law, when the really great King Pippin passed away and was succeeded by his son Charles, a greater personality even than himself, known in history as Charlemagne, Carolus Magnus, Karl der Grosse. For the first thirty years of his reign Charles devoted his energies to expanding by military power the limits of his kingdom until by the beginning of the new century it extended from the Ebro to the Eider and the coast of Dalmatia, and included, besides all the German tribes, a great Italian and Gallo-Roman population and a large Slavonic element.

Time and conditions were now ripe for the organization of this vast territory and these various peoples into an all-comprehending state in which the great problem of the sanctity of law should be met and given a conscious solution. In the year 799 the revolt of the population in the city of Rome against the civil rule of their bishop furnished the occasion. The bishop, Leo III, fled across the Alps to the camp

of King Charles at Paderborn and there, in the great German forest, surrounded by the soldiers of the king, these two great men laid their heads together and constructed the grand scheme of political and ecclesiastical civilization which was to direct the destinies of Europe for the next thousand years. The system evolved in these deliberations, both in its essence and relations, can best be understood by presenting the events immediately following this momentous conference.

The king sent the bishop back to Rome under the protection of a powerful military escort, which quelled the revolt and restored the bishop to his offices and powers and upheld him in their fullest exercise, and the next year went himself with a great army to Rome to put in operation the plan agreed upon between himself and the bishop at Paderborn. On Christmas Day of the year 800, which, according to the time-reckoning of that period, was the first day of the new year and the new century, the king with his chieftains and the leading personages of Rome were assembled in the Apostolic Church to hear the mass read by the bishop, when suddenly the great prelate approached the kneeling monarch, anointed him with holy oil, and placed a crown of gold upon his brow, and the assembled throng shouted as with one voice: "Hail to Carolus Augustus, crowned of God great and peaceful Emperor of the Romans, life and victory!" The goal of the more than a century of striving on the part of the great family of the Pippins had been reached and the elements finally brought together for the construction of the two great institutions of the European world which gave direction to its system of civilization for the next thousand years—the Roman Papacy and the Holy Roman Empire of the German Nation.

The fundamental principle of this philosophy can be stated very briefly. It was, in a word, that the Christian God of the Nicene Creed was the one Creator and Ruler of the entire

universe; that he made known his will in the government of men through the organ of the Roman bishop, the Pope of the Christian Church; that the Pope exercised, either immediately or through his appointed agents, this God's commands in spiritual affairs and conferred upon one, created Emperor by his own anointment and coronation, the authority to execute, himself immediately or through his appointed agents, the commands of that God in secular or civil affairs. The question of the sanctity of law, from the point of view of the legitimacy of its source, was here fully answered; namely, the will of God as revealed through the Pope, the successor of the Prince of the Apostles, and transmitted by him and those authorized by him, down to the most local instance, in the control and government of men, and executed in exact accordance with the interpretation put upon these divine commands by the Pope and those authorized and instructed by him.

Be it fully understood that we are not here contending for the truth or fiction of these propositions. Every sincere historian is bound to accord to fiction a very great rôle in the production of human civilization. In fact, we do not believe that the historian has yet lived who has been able always, or even generally, to distinguish with exactness truth from fiction. What we intend by these statements is simply, that here was a theoretical solution of a very definite character given to the problem of the source of law and of its obligatory power over men—a solution for which the particular trend which the Christianization of Europe followed after the Nicene constitution had prepared the souls of men. The vast mass of the people of Europe, coming as they did under the educational influence, practically under the exclusive educational influence, of the Christian clergy, thought they understood these apparently simple propositions and were thereby prepared to embrace them. In fact, it is difficult to see how,

in the existing stage of popular culture, or lack of culture, they could have had any appreciation of any other scheme of sovereignty, law, and government.

If, however, we apply to this seemingly necessary scheme a little syllogistic logic, we shall soon arrive at some quite startling conclusions. In the first place, since the Christian God was held to be the sole divinity and the sole creator of heaven and earth and hell and all that they contained, his commands to men must be at least for *all* men, and his selective organ or organs for transmitting his commands must be regarded as authorized by him to execute them upon *all* men. This signified that the Roman Papacy and the Holy Roman Empire of the German Nation had no natural territorial boundaries inside of the uttermost limits of abode on earth; that it was, therefore, the highest duty of the popes and the emperors to extend the authority of these two divine institutions over all men.

In the second place, if law has its origin in the revealed will of God, then it must be eternally perfect from the beginning and not subject to any development, provided of course that the organ or organs employed by God in transmitting the revelation of his will be infallible in their interpretations, which this scheme must assume.

In the third place, it follows that if law has this origin and quality, men have no justification whatsoever in raising any question concerning its rightfulness or policy. The question of origin covers the whole question of the sanctity or binding power of the law. If it be true that any law is a command of the Creator and Ruler of the universe, then all men are subject to it and have only to obey. And if men think or feel practically universally that such is the origin of law, the result is about the same, no matter whether the philosophy of other times may pronounce the doctrine to be fiction.

From the point of view of such considerations it would appear that the great movement in thought and fact, consummated in the Apostolic Basilica in Rome on Christmas Day of the year 800, would lead inevitably to an almost endless period of conquest on the part of the emperors blessed by the popes and the expansion of the great Christian Empire over the entire known world. But there were many things in the way of such a result which we must consider in historic detail; for example, the regulation of the choice of the Pope and the title of the Emperor; the drawing of the line between spiritual and secular government; the unanimity of thought and action between popes and emperors; the settlement of all possible disagreements between these two great personages, or rather institutions, in such a way as never to arouse in the minds of men any question of their divine origin and authority.

All these points in historic detail will furnish the subject of our next chapter, since a minute understanding of them is absolutely essential to the further treatment of the great question of the sanctity of law from the point of view of modern political philosophy.

CHAPTER IV

PRACTICAL DEVELOPMENT OF THE THEORY OF LAW BY DIVINE REVELATION THROUGH POPE AND EMPEROR

There can be little doubt that Charlemagne's understanding of this doctrine was that the delivery through the bishop of Rome to him of God's commands in the government of men, with the authority to enforce them, had been completed once for all, and that the bishop had no further right, power, or duty in the premises. There is equally little doubt that the bishop conceived that he was the permanent, continuing organ through whom new divine commands should be transmitted to the already authorized Emperor as well as through whom the consecration and empowerment of new emperors should be effective. These two views were destined, of course, to clash with each other when the occasion should arise and when the fitting personalities should appear upon the scene.

During the life of Charlemagne the occasion remained in abeyance. He outlived all his sons except one, the so-called Louis the Pious; and whatever might have been his plan regarding the establishment of kingdoms within the Empire for each son as local governments under the sovereignty of the eldest son as emperor, the accidents of nature foiled it, except in one particular. He had made his son Pippin king in northern Italy, and after Pippin's death had permitted Pippin's son Bernhard to succeed him; and so when Louis the Pious became sole heir to all Charlemagne's offices and powers, he found his nephew Bernhard claiming an illy de-

financed authority in Italy. This was the chief embarrassment suffered by the new Emperor during the first few years of his reign.

To this, however, others of a far more serious nature were soon to be added. In the last year of his reign, 813-814, Charlemagne had made Louis, then his only surviving son, co-emperor with himself. He had, in other words, crowned Louis Emperor to succeed himself. Coronation by the bishop of Rome was evidently not considered necessary by either Charlemagne or Louis. Louis, nevertheless, was of a religious nature and thought much of death and a hereafter. He had been upon the throne only three years when he began to make preparations for the succession. He had three sons by his first wife: Lothair, Pippin, and Louis. In this first disposition he seemed to follow his father's idea. He made Lothair his successor as Emperor and also king in a large part of the whole empire. To Pippin he assigned Aquitaine as a kingdom, and to Louis, Bavaria. Bernhard was left in Italy. This was theoretically a statesmanlike arrangement. The trouble was that these men were not amenable to any such arrangements. It was unsatisfactory to them all from the first; and when Emperor Louis undertook later to modify it himself in behalf of a son by a second wife, they rose in rebellion against him, drove him from the throne, and harassed him to death. This latter event occurred in the year 840, and the brothers now fought out their controversy on the field of battle and finally came to an agreement whereby the great empire was divided into three practically independent states: East Francia, West Francia, and Italia.

The result of such violence and madness was utter demoralization of the Carolingian system of legal sanctity. The idea that the law of the Empire was divine command revealed to the Emperor through the bishop of Rome and then left

once for all with the Emperor to apply as he would, through whom he would, had broken down completely. The logic of events had thus favored the correctness of the bishop's view of the theory; namely, that *each* Emperor must be consecrated by the bishop and must receive from the bishop the revelation of the divine will in his government before he could pass as the divine agent and be regarded as empowered to interpret and administer the divine commands in secular affairs.

Not only had the anarchic results of the contrary view made this evident, but the successful assertion by Bishop Nicholas I of his jurisdiction over King Lothair II in the matter of Lothair's attempted divorce from his queen, Teutberga, was the complete vindication of the power of the bishop as the supreme, exclusive, continuing organ of divinity in the execution of the divine commands within the sphere of domestic relations, at least.

Apparently recognizing the requirements of the situation, an illegitimate descendant of the Emperor Charlemagne, Arnulf, having been chosen king of East Francia, or Germany, by the great landlords, the royal officials, and the bishops, went to Rome and laid his request before the then reigning bishop, Formosus, to be crowned Emperor. Hoping to bring peace and unity to Europe again, Formosus anointed and crowned Arnulf Emperor in the year 896. But the situation, both internal and external, was beyond Arnulf's power to control. He did not succeed in establishing his imperial sovereignty over the west and south of the Carolingian state, and the defense of its boundaries against the Saracens in the southwest, the Danes and Norsemen on the north, and the Slavs and Magyars on the east was hardly entered upon before death claimed him and also his son and only heir, Louis the Child.

At the beginning of the new century (the tenth) the nobles of East Francia, or Germany, had again to select a sovereign. They chose the duke of Franconia, Conrad, and upon his sudden death Duke Henry of Saxony, as German king. These did something in the reorganization of the royal authority in Germany, but practically very little in the reëstablishment of the Carolingian Empire. Henry was successful in reasserting the hereditariness of the German crown in his family, and there succeeded to him one of the greatest statesmen who have ever participated in the organization of Europe, Otto I.

Otto became king of Germany in the year 936. For the first twenty-five years of his reign he gave himself to the work of consolidating his power and authority as German king and in securing the boundaries of his state against encroachment from without. Then backed by a mighty army, hardened and disciplined by practical experience, he marched to Rome and demanded the imperial crown and sovereignty at the hands of the bishop of Rome, Pope John XII. The Pope acceded to his request; and his anointment and coronation was second only to that of Charlemagne himself in pomp and circumstance and had the same meaning: the restoration of the Christian empire of the world and the reëstablishment of government by divine command revealed to the Pope and through him to the Emperor, crowned by him, in secular affairs.

The experience gained by both emperors and popes in the collapse of the Carolingian effort for the establishment of this great theory had inclined them all to work together with greater harmony and unanimity and with a greater spirit of conciliation in the realization of the vast scheme, and therefore we have reason to expect to find a nearer approach to the solution of the great problem of the sanctity of law through the Ottos than by the Carolingians.

Through the reigns of Otto I, Otto II, Otto III, and Henry II—that is, from 962 to 1024—the emperors and bishops of Rome during this period followed this saner policy, from the point of view of their own interests and ideals and the peace of the world. The emperors recognized the necessity of the consecration and coronation of *each* emperor by the bishop for his empowerment to interpret the divine commands and execute them in secular matters. They also acquiesced in the bishop's claim of jurisdiction over princes in the realm of domestic relations. And, finally, it may probably be held that the emperors now ceased to assert any sovereignty over the so-called States of the Church and any supervision of the bishop's government therein. The bishop's position as patriarch of the entire orthodox Christian Church had never been a subject of dispute between the two great authorities of the European world.

On the other hand, the bishops had recognized the principle of hereditariness in the descent of the imperial office and were not inclined to refuse consecration and coronation to any fairly proper scion of the imperial race. Who should determine when the candidate presenting himself came within this description, in addition to being the heir according to the custom of hereditariness, cannot be said to have been fully settled. Most important of all, however, the method of choosing the bishop himself had not been clearly fixed. Some of these emperors had claimed and exercised a certain participation in his election. It was even claimed that because the bishop was the secular governor of the States of the Church, he should be regarded as an imperial official and therefore subject to appointment, at least, if not dismissal also, by the Emperor.

Here were still plenty of points for controversy between the emperors and the bishops of Rome, and it could not be

expected that, despite the wisdom of experience gained by those personages in the two hundred years from Charlemagne to Henry II, men would not come to occupy these positions who would engage in open conflict over these questions.

The matter of greatest importance* was the tenure of the bishop of Rome, the patriarch of the orthodox Christian Church, the ruler in secular as well as spiritual affairs of the States of the Church,—practically all of middle Italy,—and the organ of divine revelation in the religion, morals, and government of the world. We have seen that down to the middle of the eleventh century no method of selecting the bishop of Rome, and as for that the bishops generally, had been clearly and definitely fixed, and that when the bishop became the secular governor of the States of the Church and a fief-holder of imperial property, the way was open for the Emperor to claim the right of appointing the bishop as an imperial official. It went even so far that the people of Rome and the surrounding cities assumed by vote to confer upon the Emperor the power to appoint the bishop. This is held by the most correct Church historians to have occurred in the year 1046, when Henry III was Emperor and Clement II bishop. In 1059, however, there came to the bishop's seat in Rome a much stronger character than any who had for some time preceded him, Nicholas II; and with him, as principal secretary, was the acutest intellect of the age, the famous Benedictine monk Hildebrand. Hildebrand had served under a number of bishops before the accession of Nicholas, and had enjoyed ample opportunity to observe the weak points in the tenure of the Roman bishops and had worked out in his own mind a scheme for correcting them.

The new bishop was just the man to appreciate the suggestions of the wily monk. Almost immediately upon taking office he called the Lateran council of 1059 and laid before

it Hildebrand's proposition. The purpose of it was to free the bishops' tenure both from imperial control and laymen's suffrage. The plan gave the election of the bishop to a college of the bishops, chief presbyters, and deacons of the archdiocese, so to speak, of Rome, who should elect the bishop for life; that is, not subject to approval or dismissal by the Emperor or any other conceivable authority. The composition of the council before which this plan was laid is not known with complete accuracy; but it assumed to adopt this plan, and it was put into operation at the next change in the occupancy of the bishop's chair.

With this we may say that the papacy of the bishop of Rome was practically constituted. It consisted of the episcopal office of the diocese of Rome, the office of patriarch of the entire orthodox Christian Church, the independent government over the States of the Church, the supreme power over all domestic relations within the extent of his patriarchate, the power to anoint, crown, and consecrate the emperors of the Holy Roman Empire, and the original and exclusive authority to interpret and transmit the divine commands for the conduct and control of all men. The edicts of all emperors, kings, and other rulers, when in accord with the papal direction, had, under this constitution, the sanctity of law as divine command reaching men by revelation from on high. No matter what any person might think about the wisdom, justice, or policy of the law, if it was divine command thus conveyed to men it carried with it the obligation of obedience, which we understand as sanctity.

The Roman Christian Church had thus reached a logical formulation of the doctrine of the sanctity of law from the point of view of the legitimacy of its origin as divine command, imparted to men by revelation through the Pope and executed by organs authorized either directly or indirectly by

the Pope. It was a great scheme for the peace of the world and the unity of all men in the bonds of the same church and the same state. The idealism of it was superb and fascinating. But would it work? Would even the men and institutions most interested in its existence be able to coöperate with each other with that placid unanimity necessary to impress the masses with the belief that what was handed out to them as religion, morals, and law had really the force behind it of divine command and must therefore be obeyed, whatever its supposed nature or result? Let us see.

From the date of the Lateran council which fixed the tenure of the bishop of Rome, whom we shall from now on denominate *Pope*, Nicholas II maintained firmly the great position, whose functions and authorities have been above described, to his death in 1061. Succeeding him came a man of much determination, though hardly his equal, Alexander II, who for nearly a dozen years only fairly held what had been gained, when death took him away, and the Cardinals elevated the great secretary Hildebrand to this highest of all offices in the Christian world and gave him the title of Gregory VII.

During the first period of his reign he promulgated those famous decretals, the object of which was to free the clergy of the whole orthodox Christian Church from secular control. They may be distinguished under two heads, namely, those directed against the marriage of the clergy and those against the holding by the clergy of fiefs from the emperors, kings, or other secular rulers. By the first it was intended to sever the social bonds holding the clergy to the interests of the people at large; by the second, to free them from vassalage to any secular power.

It was the latter which was felt by the Emperor and the nobles. It would change the fiefs held of them by the clergy

from tenancies to ownerships in full property, and at once they arose in protest against it. The Emperor convoked a council of the clergy north of the Alps, under his control, and secured from it a resolution deposing the Pope. The Pope answered by excommunicating the Emperor.

This anathema, closing the gates of heaven against the Emperor and consigning him to hell after death, as well as being the declaration of a universal boycott by all Christians against him, drove the Emperor to seek absolution from the Pope. The two met at the castle of the countess Matilda, and the degrading scene of Canossa was enacted, wherein an Emperor stood barefoot in the cold outside the gates of the fortress, waiting and begging to be admitted, and, when finally allowed to enter, prostrated himself in penitence for forgiveness. This occurred in the year 1077, and the personalities then occupying the two great offices were Henry IV and Gregory VII.

The imperial office was made subject thus to a degradation from which it never recovered, and the papacy was confirmed in its claim of being the sole organ for the revelation of the will of God to man for his government in this world as well as for his preparation for the next.

This does not signify that the emperors acquiesced without further struggle in this order of things. The successor of Henry IV claimed all the prerogatives of the imperial office as understood by Henry III. He even seized the Pope Paschal II and subjected him to a rigorous imprisonment. No sooner was the latter free, however, than he disavowed all of his concessions; and though appearing at the council of Worms of 1122 in answer to the imperial summons, and making certain concessions,—more in form than reality,—he came out victor, and the Emperor was made to see that the great institution which claimed, and in the belief of the age

held, the authority of consigning men's souls to heaven or hell, could never be conquered by a power which was confined to the exercise of earthly punishments, no matter how severe.

Moreover, this institution served as the rallying point around which every element of dissatisfaction with the Emperor's rule might be gathered; and so compact and definite was the organization thus effected that it took a distinct and most suggestive title as a party designation, which to this day carries a meaning generally understood in Europe and not entirely unknown in this country, namely, the Guelphs. With the aid of the Pope, and the clergy under his command, the chief nobility and high ecclesiastics now seized the election of the Emperor; and the so-called College of Electors, comprised of the archbishops of Mainz, Trèves, and Cologne, the king of Bohemia, the duke of Saxony, the margrave of Brandenburg, and the count palatine, was gradually formed and proclaimed itself the electoral body of the imperial system. This body as thus constituted chose in 1138 Conrad, named the Third, of the House of Hohenstaufen, to be Emperor, who, in spite of all his endeavors to maintain the prerogatives claimed by the earlier emperors,—under conditions, too, which usually favor the growth of military power (this was the era of the First Crusade),—effected nothing of permanent consequence.

His relative Frederick of Hohenstaufen succeeded him, not by virtue of hereditary right, but by election. Here was the character, at last, to restore the Carolingian power and authority. He started out with great courage and determination. His personality was both attractive and impressive, even picturesque. He won for himself the descriptive sobriquet of "Barbarossa," but not much more. Accompanied by a host of warriors he, soon after his election, proceeded to Rome

and demanded consecration and coronation by the Pope, Hadrian IV. Hadrian was not averse to according this demand, provided it took the form of a request or petition and recognized the Pope as the superior authority and the sole organ of communication of the divine commands for guiding and controlling the conduct and government of men. This attitude on the part of the Emperor was to be manifested by his holding the stirrup for the Pope to mount his palfrey. The Emperor, with great display of indignation, refused to perform this menial act, as he considered it; and the Pope coolly informed him that until he should do so, he would not be crowned Emperor. Frederick finally yielded with much chagrin and thus agreed to occupy the second place in the world when compared with the position of the papacy.

After the death of Pope Hadrian, however, who appears to have been a character of much more than ordinary strength, the Emperor undertook to get control of the papacy by liberalizing, or democratizing, the manner of the Pope's election. Frederick called together a general council of all the bishops of the Empire under his own presidency, and this council elected one Bishop Victor as Pope. The College of Cardinals met in Rome, however, and chose Alexander III; and the struggle between Guelphs and Ghibellines was renewed, only to end as before in the humiliation of the Emperor and confirmation of the proposition that the Pope was the sole original interpreter of the will of God to man. On invitation of the Venetian Doge, Sebastian Ziani, the Pope and Emperor met in Venice; and in the square upon which the great Cathedral of San Marco fronts, the Emperor made this final concession.

Once more, however, the great struggle over this point was destined to be renewed. The successor of Frederick Barbarossa was his own son, Henry VI. The change happened

upon Barbarossa's death in the year 1190 and by the vote of the College of Electors. This prince was married to Constance, heiress to Naples and Sicily, the Italian territory south of the States of the Church. He had all of his father's intellect and will power and was not restrained by any of his idealism or feeling. He submitted to coronation by the Pope and was therefore possessed of the imperial office in the usual manner, as fixed by the popes. But all the while he seems to have been revolving the idea in his mind that the way to vindicate the claim of the Emperor to be the original organ through which the commands of God in the secular government of man were revealed was to secure the succession to the imperial office by hereditary right. He conceived that the control of the imperial tenure either by the College of Electors or by the Pope or both together was utterly inconsistent with the claim that the Emperor stood next to God in the secular government of the world or any part thereof. It is difficult, if not impossible, to find any flaw in this logic.

Soon after his accession the new emperor proposed to the great vassals of the crown to make their titles to the fiefs held by them alodial instead of feudal, and to the clergy to cease to require any aids from them for the properties of the crown held by them, provided they would all recognize the succession to the imperial crown to be in the Hohenstaufen family by hereditary right. The Pope, Celestine III, a rather weak character, appeared to be in favor of the bargain, and it is generally acknowledged that he actually consented; but the great vassals and a large party among the clergy opposed it, and in the face of this discontent the Pope withdrew his approval.

The only advantage gained by the Emperor was the election of his young son Frederick to be King of the Romans,

which title and office was later understood to signify that its holder should succeed to the imperial throne on the death of the existing ruler. Henry VI died, however, in 1197, while Frederick was still within his minority; and a very powerful personality came the next year into the papal chair, Innocent III, who immediately set about undoing all that Henry VI had accomplished. He lent the support of the papacy to the candidacy of Otto IV, duke of Brunswick, for the imperial crown, against Philip of Hohenstaufen, brother of the Emperor and protector of the rights of the Hohenstaufen to the imperial office. Philip appeared for a little while to be on the road to some success when he met his death by assassination. The Pope, however, found himself greatly deceived by Otto IV, after his coronation as Emperor, and even went the length of excommunicating and dethroning him, and of setting in his place Frederick II, of Hohenstaufen, who had by the year 1212 arrived at his majority.

The feeble efforts made by this emperor to claim the powers formerly understood as belonging to this great office were quickly and thoroughly defeated, and he was compelled to issue the two so-called "pragmatic" sanctions of the years 1220 and 1232, which acknowledged the sovereignty of the bishops and secular nobles in their own towns and territories, except when the Emperor might be personally present to exercise his own government immediately over them. Of course, any pretense on the part of the Emperor to be the primal organ for the revelation of the divine will in the secular government of man was utterly ignored.

The Pope's position as original, immediate, and exclusive organ for the spiritual and secular government and conduct of men seemed now finally assured. But there were forces and elements working beneath the surface which were destined to make this solution of the authority and sanctity of

law appear as of temporary value, like every other institution which man has yet invented.

The first condition of a stubbornly adverse nature, involving many forces of powerful hostility to the realization of the theory of Charlemagne and Leo III or that of the later emperors or popes, was the impossibility of extending the sway of the Christian Empire over the whole world, as the logic of the system required. Perhaps I should not use the word "impossibility" in this connection. Had the emperors been less pettily self-assertive and more profoundly conscious of the value of the papal friendship and support in their great work, and made no issue with the popes concerning the papal claim of sole original authority in the transmission of the divine commands for the government and conduct of men, it is at least conceivable that the Empire might have included all of the orthodox Christian world. But even the great author and constructor of this institution, Charlemagne, did not sufficiently grasp the idea of his position as an office, rather than a property to protect against division and disintegration. His plan to divide the Empire into kingdoms for each of his sons, without making them imperial agents simply, reveals the fact that he did not himself sufficiently understand the necessary logic of his system regarding the origin and sanctity of the law. As we have seen, this plan was foiled only by the accidents of mortality, his sons, except one, having passed from life before himself. The plan, as we know, was carried out later by his son, the Emperor Louis the Pious, and therewith the first deadly blow to the unity of the Empire was dealt.

With orthodox Christendom divided into a number of states, the head of each claiming to be the equal of the other in the transmission of the divine will, the imperial unity was, of course, destroyed and the fundamental principle of the system of the Holy Roman Empire undermined. There was

then only one way to save the peace and order of orthodox Christian Europe, and that was for the papacy to hold to, and substantiate, its claim of sole original organ for the revelation of the divine will to man regarding government and conduct and of sole transmitter of it to the secular rulers, who must all accept and execute it in exact accord with the papal interpretation. Since among these secular rulers only the Emperor had any shadow of a claim against the papal dictum, it appeared at first possible, even likely, that the secular rulers would accommodate themselves to this order of authority, and the popes soon came to adopt the policy of upholding the independence of these rulers against any imperial claims of sovereignty over them,—the so-called Guelphism of the Holy Chair. It was this policy more than anything else which prevented the Holy Roman Empire from becoming the empire of orthodox Christendom and made Europe a geographical name mainly.

The three most important results of this papal attitude were the creation of Capetian France antithetic to the Empire, of Norman England in a like position of independence and aloofness, and the transformation of the Empire itself into a confederacy of quasi sovereign states, in each of which the prince regarded himself as ruler by the "grace of God" and was sustained in this claim by the people under the influence of their spiritual advisers, it being understood that, in every case, authority by the "grace of God" meant authority as transmitted and interpreted by the papacy. The Capetians in their work of constructing an independent state in the western part of the Empire were especially clever in yielding from the first and with apparent good grace to the view of the papacy respecting the origin and procession of authority. They saw quite clearly, at the outset, that the feudal system of property was displacing the governmental system of

Charlemagne. In fact, as large owners of real estate, they themselves had helped mightily to bring about this situation, and they now, in their work of building up an hereditary kingdom in the west of the Empire, profited most opportunely and constantly from this experience. They comprehended that support by the Pope meant support by the clergy, and that support by the clergy meant support by the masses against the feudal lords and their disintegrating policy. They therefore carefully refrained from disputing the claim of the Pope to the sole original authority for conveying the edicts of the divine will to man.

Even that powerful personality King Philip Augustus, who came to the French throne some two hundred years after its establishment by Hugh Capet and who therefore stood upon a pretty firm foundation, yielded without any noticeable resistance to the Pope's jurisdiction over his own domestic affairs. The king sought, under the influence of the charms of the beautiful Agnes of Meran, to divorce his lawful wife and queen; but the Pope, Innocent III, forbade him, and he bowed to the will of the Holy Father, as the primal organ of the transmission of God's commands in the government of men.

So entirely and constantly obedient to the papal authority were the Capetians that they won the title of "most Christian kings," a designation of which not even the churchly subservient Hapsburgs could deprive them when they came to the throne of the Empire in 1273, and though maintained in the possession thereof for more than five hundred years chiefly by the support of the popes. In studying carefully this attitude of the Capetians one can hardly avoid the feeling that some of them, at least the more astute ones, regarded this papal theory of the origin and sanctity of the law as a fiction,—a harmless fiction, provided proper and clever ad-

vantage should be taken of it. A certain amount of apparent self-effacement in the papal presence and in dealing with the papal claims, which to French courtesy was not difficult, would secure the substance of things by the sacrifice only of the shadow.

Even more demoralizing to the theory of the Holy Roman Empire as the universal Christian state was the creation and organization of the separate and independent British Empire as a Christian state also. The occupation of the large island called, later, England by the Angles, the Jutes, and the Saxons, and their creation of a number of petty states therein corresponding in extent to their lines of tribal settlement during the fifth century of the Christian Era, proceeded, at first, without the support or restraints of any religion, unless we term their heathenism and the claimed descent of their leaders from the god Wodan as a religion. For about one hundred and fifty years they worked on combining their tribal states into larger unions, until by the close of the sixth century these had been reduced to seven,—the kingdoms of Kent, Essex, Sussex, Wessex, East Anglia, Northumbria, and Mercia, each ruled over by a separate king under the limitation of an assembly of chiefs, which resembled more an executive council than a legislature.

At this point and period in the evolution of the English state the bishop of Rome, Gregory the Great, sent St. Augustine and his monks into these kingdoms for the conversion of the populations of these petty states to Christianity. During the period of the Roman Empire the Christian religion had been introduced among the Celtic inhabitants of the island, but had with these been driven back into the northern and western part thereof by the invasion of the Teutonic tribes and the total expulsion of the original inhabitants of the middle, southern, and eastern districts of the island. The

conversion of the populations of these Teutonic states in the sixth and following centuries was thus more in the nature of an entirely new creation than a reestablishment.

It began with the kings and those in high place officially and socially, and proceeded by persuasion and conviction rather than by force until by the close of the seventh century about every person throughout the Heptarchy was to be considered a Roman Catholic Christian.

The Church was, almost from the first, hierarchically organized throughout the Seven Kingdoms, with the Archbishop of Canterbury as the primate in them all. It established the doctrines of one God, of the revelation of his will for the conduct and government of men originally through Jesus and then the popes, of heaven and hell, of salvation and damnation, and of the sanctity of law upon the basis of its divine source as interpreted by the Church, that is, by the popes. It created thus a common belief and opinion throughout the Seven Kingdoms concerning the fundamental principles of government and conduct and paved the way for the unity of them all under the Cerdics, the kings of Wessex, and then, after Egbert and Alfred, the kings of England. This development was momentarily halted by the Danish invasion of England in the first half of the ninth century, and during the entire Danish period it was shaken and disturbed; but with the conquest of the island by William and his Normans in 1066 it was resumed in full play, and under the direction of such powerful intellects and organizers as Lanfranc, Anselm, and Langton another powerful state subservient to the papal system was firmly established, which was destined to stand invincibly hostile to the spread of the Holy Roman Empire as the political unity of Christendom.

And, finally, the breaking up of the centralized system of the Holy Roman Empire itself into a confederation, so to speak,

of feudal estates and free cities, where the ruling person or body in each one of these could look to the Pope for investment with rulership by the "grace of God," made the organization of the Christian world in *one* state an utter impossibility.

I have already related the initial steps whereby this historic tendency and trend were instituted and pursued, driven onward by two main forces, namely, the controversy between the Pope and the Emperor regarding the precedence in the interpretation of the divine will and its conveyance to man, and the growth of the feudal system as the fiscal order of the Empire,—the first of a highly theoretical nature, but the second necessitated by the hardest kind of practicality.

Dwelling on the last consideration briefly first, it is sufficient to point to the fact that in the absence of any system of taxation the revenue of the imperial government depended almost entirely on what we would now call the rent of the vast landed properties belonging to the Emperor in his various capacities as private owner, duke, king, Emperor, or what not, let out for years, life, or in perpetuity, and paid for in personal service or any and every kind of product. It is calculated that on the accession of Barbarossa nearly if not quite half of the territory of the Empire was under this system, the Emperor obtaining in this way not only the means for keeping up his various residences and defraying his private expenses, but also for paying the salaries, as we now express it, of his officials and agents of every nature,—even the bishops, of whom there were hundreds, if not thousands, within the Empire, being compensated and supported by the bestowal of fiefs (landed estates) upon them. In the absence of any clearly drawn distinction between property and office the holders of these estates from the Emperor exercised a power of control over the residents therein which was gradually developed into a local governmental authority; and

when the popes, with Gregory VII and after him, entered upon and pursued their Guelphish states'-rights policy, this authority took on more and more the nature of an autonomy or a papal agency than of an imperial office. This relation between the Emperor and all these persons, whether they were termed counts, bishops, or barons, attained constitutional guaranty in the two pragmatic sanctions of 1220 and 1232, issued by the Emperor Frederick II, whereby the authority of the bishops and nobles to govern in their own towns, territories, and properties when the Emperor was not present in person was recognized and confirmed. From this first date onward for fifty years the dissolution of the Holy Roman Empire made rapid progress, until the popes themselves became convinced that they were pursuing their Guelphish policy too radically and that anarchy was to be feared without the Emperor to hold in check the forces of disintegration. Their problem was to find and set up an emperor, but such an emperor as would accommodate himself to the papal system of authority as the sole original organ for the interpretation and transmission of the divine will for the government and conduct of men.

They found such a personality in the head of the House of Hapsburg and secured his choice to the imperial office in the year 1273. The members of this noble house were ready to enter into an agreement with the popes, recognizing the subordination of the imperium to the papacy in the theory of the origin and sanctity of law for the concession by the popes of their hereditary right to the imperial office, which understanding, after some century and a half of adjustment, became the settled law of the Empire to the time of its final dissolution in the year 1806.

I will not relate with any detail the facts regarding the practically maintained independence of the Danish, Nor-

wegian, Swedish, and Spanish kings over against the theoretical claim of the Empire to be sovereign of them all. The claim was certainly logical on the basis of the theory of the universal world state emanating from the one and only true God and Creator of the universe and established through the papally crowned Emperor. Nor will I dwell further upon the difficulties which the Emperor found in upholding the authority of the Empire in the peninsula south of the Alps.

It will be necessary, however, to call attention a little more minutely to the insurmountable obstacle placed in the way of the realization of the theory of the Empire by the existence of the Constantinian state and the Oriental Christian Church and by the creation of Russia as their protector and continuator during the Middle Ages. When Constantine the Great decided to move the capital of the Roman Empire from the Tiber to the Bosphorus, it is more than probable that the thought of being nearer to the places where the Christian religion arose had some weight with him. At any rate, we know that three of the four patriarchates of the Church were created in the later-named Eastern Roman Empire and only one in the West, that the creed of the Church in the East differed from that of Western Christianity in several very material respects, and, lastly and most important, that the ruling race in the development of Russia was early converted to the doctrines of Oriental Christianity and maintained them so vigorously as to win the appellation of "Holy Russia" for the name of their empire.

It was a few years after the middle of the ninth century that a band of Scandinavian adventurers, led by a chief called Rurik, issued from the district now named Finland and seized the territory of and around the present city of Novgorod, and settled upon it and reduced the existing residents in and around it to subjugation,—a movement exactly similar to

that of the German tribes into middle, western, and southern Europe, and of the Danes, Angles, Saxons, and then of the Normans into England. From Novgorod as a center and capital this race of Teutons, distinguished by the name of "Varangians," spread out, imposing their rule upon the existing inhabitants, making the new empire correspond thus in the nature of its structure with that of the other political creations in the middle, western, and southern parts of Europe.

Rurik's son, Igor, carried the Russian armies to the very gates of Constantinople and was prevented from undertaking to enter them chiefly by a vast booty delivered by the Greek Emperor to him. His son Sviatoslaff succeeded him, in his minority under the regency of his mother, Olga, said to have been a woman of extraordinary intelligence and capacity. With fine feminine instinct she discerned the necessity for an education of the masses of her subjects of various races such as would produce a consensus of belief, rather than of opinion, among them,—a consensus which would tend to make of them loyal subjects to their ruler. She shrewdly suspected, to put it mildly, that the Christian religion and the Church organization which upheld it would furnish the force and the means for producing this consensus.

In the year 955 the historians relate that she made a journey to Constantinople, then no easy undertaking, and was baptized into the Christian Church by the Patriarch himself, with the Emperor Constantine Porphyrogenitus for her godfather. Her son Sviatoslaff, however, refused baptism and stuck to his heathenism; but her grandson Vladimir, a man said to have been of much higher endowment than his father, entered upon the policy of his illustrious grandmother, went to Constantinople in the year 988, and was baptized into the Church and received in marriage the daughter of the Greek Emperor, the princess Anne. Herewith Russia entered upon

her rôle as the Holy Empire of the east of Europe and as the successor to the Eastern Roman Empire, the Greek Empire, for the defense of Christian Europe against the Moham-medanism of Asia.

In the year 1224 the Mongols stormed forward upon this new defender of the faith and in 1238 were able to set themselves up as the rulers of Russia. For two hundred and twenty-five years they held terrible sway, plundering and destroying Russia and menacing the middle and west of Europe, when the mighty Ivan III—of the house of Rurik probably—took up the work of expelling them from the territory of Holy Russia and, in a hundred and fifty years of unremitting effort on his part and that of his successors, succeeded not only in making Russia a European state but in fixing the Romanoffs, in the person of Michael, firmly on the throne of the Czars.

But whether under the Ruriks, the Mongol chiefs, or the later Romanoffs, Russia stood as an insuperable impediment in the way of the actual realization of the universality of the Holy Roman Empire of the German Nation, such as the logic of that system required. While it was the Christian empire of Holy Russia, it could claim to stand equally near to the Divine Head, as an organ of revelation, with the Western Empire; and while under Mongol rule it represented another theory of the universe altogether.

Finally, the advance westward of the Oriental hordes of the faith of Mohammed with a claim, very like the papal-imperial theory, of the procession of law from Allah, the one God, by revelation through the Prophet, placed an insurmountable barrier to the realization of the universal Christian empire such as the logic of the system required. This advance was almost contemporaneous with the movement of the Franks southwestward. It began with the flight of Mo-

hammed from Mecca to Medina in the year 622, the so-called Hegira. In Medina he developed his doctrines of religion, morals, and government and organized the latter in force. He must have been rather active, for in eight years he was ready with an armed power sufficient to return and make conquest of Mecca. Two years later, in the year 632, he died at the age of sixty. He had in this brief period originated and organized a system of law and conduct which not only provided for the needs of the moment but also for the means and methods of its evolution.

In this system the sanctity of the law was to be found in the legitimacy of its source, the divine will made known through revelation,—almost the papal-imperial system of Rome over again. The practical question was, again also, where to find the organ of revelation, original and continual, through which the will of God should be communicated to man for his conduct and government. Naturally the logic of the Mohammedan system required the government of the whole world by the caliph, the organ of interpretation of the will of the one and only God; but who or what made the caliph?

It seems that Mohammed, the child of poor parents, but possessed of (or perhaps it were more correct to say possessed by) an extraordinary intellect, became early the commercial agent of a rich woman named Khadija and made many journeys in this capacity into the Jewish countries along the east coast of the Mediterranean and into the eastern part of the Greek Empire. On these journeys he had occasions to observe much regarding the culture of the most advanced peoples, and he made good use of his opportunities. He was, after a few years, married to Khadija, and her great wealth was placed at his disposal in the working out of his great plan for organizing the world. He was now in a position to live a

life of financial independence and devote his time to the development of his doctrines, whether they might be religious creeds or political programs, and to secure helpers in their realization. He simply assumed to be the prophet of Allah. It is better to say *assumed* than *usurped* this position, because the word "usurp" conveys the notion of its having been already held—perhaps rightfully, too—by someone else, while the term "assume" may indicate original acquisition.

At Medina he gathered about himself a number of disciples; and when he died, these men chose his successor as the prophet of Allah, the caliph. They chose Mohammed's rich father-in-law, Abu-bekr, and were supported therein by the military force that Mohammed had gathered in Medina for the conquest of Mecca. As the doctrine of the oneness of the Mohammedan God and the universality of the authority of his prophet now took on more and more the military aspect of conquest, the caliph's position as commander-in-chief now appeared as his chief function, and the military commanders became thus his electors. The circle was thus formed. The caliph appointed the military chiefs and they in turn elected the caliph, all holding for life, as the rule.

The elements of the Mohammedan organization were now fairly complete, namely, Allah, God, the creator of the universe composed of heaven, hell, and earth, the supreme law-giver, whose will was unquestioned law, and the supreme judge, whose renderings conferred eternal joy or inflicted eternal punishment; the spirit, Gabriel, sent down by him with the revelations of his will to his chosen prophet; the Moslems, the true believers in the teachings of the Prophet, who were commissioned by the Prophet to carry the faith to the heathen everywhere, organized for this purpose as the army of the faithful, whose chiefs were appointed by the Prophet and who in turn selected the successor to the Prophet,

the caliph, the unlimited sovereign interpreter and executor of Allah's will in the control of men and fitted out therefor with the means for inflicting physical punishment on this earth and for consigning men to heaven or hell hereafter.

The sanctity, the binding force, of the caliph's edicts rested thus upon the divinity of their origin and the power, both physical and spiritual, for their enforcement. It was a system of terrific strength and wonderful expansiveness, which Mohammed and his immediate successors had thought out and established; and in about a century, despite the lack of all means of full and rapid communication, the Moslem empire, or empires, extended from the Indies to the Atlantic, including what is now known as Persia, Arabia, Palestine, Armenia to the Black Sea and the Caucasus, Egypt and all northern Africa, and the Spanish peninsula, across the Pyrenees as far northward as the river Loire. In 732 Martel and his Franks met the Moslem hosts on the plain of Tours and checked their advance into western Europe; but they occupied the territory south of the Pyrenees throughout the entire Middle Ages and have been a constant menace to Christian Europe for the better part of a thousand years, from the southwest, and are so today.

The Eastern Roman Empire was able to hold out against them until the Osmanli became the chief bearers of the banner of the Koran, but succumbed at last completely when, in 1453, Constantinople was taken by them and the rich valley of the Danube opened to their invasion. Despite the Crusades of the Western states and peoples and the resistance of the Austro-Hungarian Empire, formed for the protection of Christian Europe, they pressed forward for two centuries more, winning bit after bit of this territory for the bearers of the crescent, until under the very walls of Vienna they suffered the great defeat which confined them after 1687

to the line of the eastern Carpathians and of the south bank of the Danube, from the point where these mountains approach the river to the confluence of the Sava and up this river to its source; and there they stayed until the Russian war of 1878 drove them back on Constantinople and prepared the situation which has brought about the recent World War and its practical destruction of Christian civilization in the East and the opening of the West to the readvance of Orientalism.

I have dwelt with some particularity upon this great obstacle to the spread of the Christian empire over the world, in accordance with the logic of its fundamental principles, because of the absolute necessity of a clear understanding of this situation to any, even the most elementary, comprehension of European history from the eighth century of the Christian Era to the present, and to any enlightening appreciation of the great service rendered to Christian Europe by the Russian, Austro-Hungarian, and German empires in holding back the Mohammedan movement for the conquest of the world driven by the like compelling logic of the divine oneness and the soleness of his organ of revelation to man, the prophet Mohammed, and his successors the caliphs, and possessing, as has been already remarked, the advantage over the Christian system of the unity of the spiritual and secular sovereignty in the caliphate. There were revolts within the caliphate itself, and one such resulted in the permanently separate caliphate of Cordova, as we have seen; but the revolt was overcome, and the unity of all authority was re-established, and the sanctity of the law as the command of the caliph was completely restored. In other words, a continual contest between the spiritual and temporal was avoided, and the order of the day was peace and unison between the two functions, in contrast with the far more enduring con-

tentiousness between papacy and imperium, even in the era after the accession of the Hapsburgs and their more or less complete submission to the claim of the popes to be the sole primal organ of the revelation of God's will in the control and government of men.

With all of these practical obstacles in the way of the realization of the universal rule of the Christian state and the Christian religion,—obstacles actually insurmountable and becoming more so in the consciousness of men as the experiences with them multiplied and became more clearly comprehended,—it could not be otherwise than that demoralization of the papal-imperial idea of the organization of the world and then of Christian Europe itself should set in and consume, year by year, even day by day, the principles upon which this great system rested, the control of which over the minds of men for five hundred years had enabled it to work and produce its fruits of civilization.

The first of these great demoralizing movements is termed usually the Renaissance, the Revival of Learning, to the consideration of which, from the point of view of its effect upon the problem of the sanctity of law, we shall now proceed in the fifth chapter of this work.

CHAPTER V

HOW THE RENAISSANCE TEMPORARILY UPSET MEN'S REGARD FOR THE LAW

The word "Renaissance" is frequently translated into plain English by the phrase "Revival of Learning." Such a rendering would not, however, convey a full meaning of the term in the sense in which I am employing it. I am here designating by it a new advance in the evolution of human intelligence, not the resurrection of an old phase in that development. It can, indeed, be claimed that the revival of a knowledge of the writings of the great authors preceding the Christian Era exerted a very large influence in that awakening of the human reason to the search for truth which occurred in the centuries from the thirteenth to the sixteenth, and which has continued with ever-increasing clarity from then until now.

It must not be understood, however, by this statement that there had been no activity of the human reason in the centuries between the first and the thirteenth. The darkness of this period consists, to some degree at least, in our own inability to discern the thoughts of the men who were then laboring under disadvantages of every nature to bring about order and organization in a world of anarchy and chaos.

Despite all this gloom, some beacon lights there are which point out the direction in which the mind of man was struggling on in the path to a higher development, especially after the partial conclusion of the age of the wandering of the people of northern Europe toward the middle and south of this continent, which was destined to become the original

home of modern civilization. A few names will suffice to convince us that the human reason had not been completely crushed by the scheme of revelation, however powerfully supported by authority, although these names are of men who had some part in the creation of this very scheme. There was the Venerable Bede of Durham, born in the later decades of the seventh century and functioning in the earlier decades of the eighth, called by his biographers the "father of English history," who was the author of treatises on some forty different subjects, the majority of them, indeed, Biblical and theological, but a considerable number of them on subjects which may be termed secular, such as arithmetic, astronomy, medicine, and statements of historic events. He was noted as a teacher and instructed a large number of pupils even to the last moments of his life.

Then there was Alcuin, the great Yorkshire ecclesiastic, born in the fourth decade of the eighth century, following so closely upon Bede as to have been by some authors classed among Bede's pupils,—which, however, as Bede died around the year 735, could not have been correct. He was undoubtedly a profound student of Bede's works, especially his ecclesiastical history, and shows the influence of Bede's careful methods of research employed in the production of this great work. He received his education in the Church seminary at York in the days of Archbishop Egbert and became himself the director of this noted school. When about fifty years of age he was sent to Rome on an ecclesiastical mission and met the Frankish king Charles, who was then also on a visit to Rome, engaged at that moment in his plans for the organization of the Holy Roman Empire of the German Nation. The two encountered each other at Parma, and Charles persuaded Alcuin to go with him to Aachen (Aix-la-Chapelle), the royal capital and residence, and set up a court

school there under his guidance. He also is said to have founded the universities of Tours, Paris, Soissons, and Fulda; and it is reasonably certain that he prevailed on Charlemagne in the year 801 to allow him to retire from the court school at Aix-la-Chapelle to the abbey at Tours, where he taught a few years longer and died in the harness sometime in the year 804.

Then there was Johannes Scotus Erigena, born sometime between 800 and 810 and somewhere in the British Isles; it is not known with any certainty in which, although the name "Erigena" and the pretty-well-substantiated claim that he was educated in Irish Church schools point to Ireland as the land in which he first saw the light. He was a close student of Aristotle in the original, and was the greatest master of syllogistic reasoning among all the earlier scholars of the Middle Ages.

Around the year 843 Charles the Bald—that one of the three sons of the Emperor Louis the Pious who had become king of the western division of the Empire, called West Francia—summoned Erigena to his court and made him chief master of the *schola palatina* at Soissons. Here he studied and taught and wrote for some thirty years, made the court school a renowned seat of learning, and produced many works, some of which have been preserved to this day, such as the treatises entitled "De Divina Predestinatione," "De Visione Dei," "De Divisione Naturae," and the translation of the works of Dionysius. He labored zealously until the end of his life, which is generally placed in the year 877.

Then there was the Lombardian Lanfranc, born in Pavia in the first years of the eleventh century, of wealthy parentage, and destined by his father for high political office, but so attached to learning for its own sake that he went in search of it from place to place and, after spending a long

period in research, became a professor of jurisprudence in the university of his native town. He appears to have been too liberal in his ideas and methods for the political and ecclesiastical situation of the day in the Italian peninsula; and with some of his colleagues he migrated to Avranches and established in this Norman French town a school of jurisprudence which soon attained great success and renown. In the midst of this eminently prosperous venture Lanfranc astonished his associates by announcing his purpose of becoming a monk. He resorted to the famous monastery of Bec, and after passing a number of years in preparation he became the prior of that monastery. From here he was advanced to the position of first abbot of the abbeys of St. Stephen and of the Holy Trinity at Caen; and in less than ten years of remarkable service in this important position he was, through the influence of his friend the Norman king of England, made Archbishop of Canterbury, the primate of the Church of England. In this position he worked with the masterful King William for the reasonable autonomy of the Church in England over against Roman ultramontaniam, and did so quite successfully. He also educated a number of renowned pupils in his cathedral school at Canterbury and composed a few important treatises, which are known to us of the present day, such as his "*Tractatus de Corpore et Sanguine Domini*" and his "*Liber Epistolarum*." He is said to have passed away at his beloved Canterbury in the year 1089.

Among his pupils was the illustrious Anselm, also born in Lombardy, at Aosta, in the year 1033. He was also of noble birth and intended by his father for high political office, but like Lanfranc passionately fond of learning for its own sake. He, at an early age, desired to enter a convent for his education; but, forbidden to do so by his peremptory father, he ran away from his home, after the death of his good, sym-

pathetic mother, and made his way across the Alps to Bec, to enjoy the teachings of his countryman Lanfranc. After long years of study with Lanfranc he became the abbot of Bec. Under his direction the school at Bec attained the position of the most important seat of learning in Europe. After fifteen years or more of most successful work at Bec he was called to the position of Archbishop of Canterbury and primate of England as the successor of the deceased Lanfranc.

He was less amenable to the will of the king in Church matters than was Lanfranc, and was even for a time virtually excluded from England by the king; but finally his patience and firmness prevailed, and in the year 1107 he was at last recalled to his post and remained there until his death in 1109. His treatise "De Veritate" and the "Monologion" and "Proslogion" are the works which give us greatest insight into the fundamental principle of the scholasticism of the era before the Renaissance and will be referred to in detail a little farther on.

I will mention, finally, Abelard, the brilliant votary of both Minerva and Venus, whose passion for the latter gradually obscured and undermined his devotion to the former and led to his demoralization, downfall, and death. He was born of a noble family, somewhere near Nantes, in the year 1079, educated in Compiègne under Canon Roscellin and in Paris by William of Champeaux, one of Anselm's disciples. These two instructors differed widely in opinion upon certain fundamental theological questions, and Abelard had thus the great advantage of looking at things from at least two points of view in his early mental discipline and development. We may regard, thus, the cathedral school of Notre Dame in Paris as his real Alma Mater.

Upon his graduation, so to speak, from this school he established an institution at Melun. From here he moved into

Paris and first set up his house of instruction on the heights of Sainte-Geneviève; but very soon, somewhere around 1115, he became canon in Notre Dame and head teacher in its school. His success for a few years was really marvelous. Thousands and thousands of pupils flocked to him, and for a few years he was the most noted teacher in Europe. At length, around the year 1118, there entered the cathedral school of Notre Dame a young woman of exceeding beauty, brilliant intellect, and great zeal in study, the noted Héloïse, niece of Canon Fulbert and ward of the same. Abelard was her teacher almost exclusively. Soon she bore him a child, with disastrous effect upon their careers, she seeking refuge in the convent of Argenteuil, where she soon took the veil, and he in the abbey of St. Denis, from which in a year's time he emerged and set up another school, at Maisoncelle, to which students again flocked. He now seemed in the way of reëstablishing his reputation, but his rationalistic interpretations of the Bible brought ecclesiastical persecution upon him. Tried by the synod of Soissons of 1121, he was condemned to imprisonment in the convent of St. Médard. On being set free from this ignominious confinement, he repaired to a desert district on the Seine called Nogent, built himself a hut and became a hermit. When it became known where he was, students began to flock to him again; and he set up his own school of theology and philosophy in this place, and in the house built for him by his students, called by him the Paraclete. This was so near to Paris that he soon began to feel the approach of new dangers and was induced to accept an offer of the presidency over the abbey of St. Gildas-de-Rhuys, in the farthest part of Brittany. He ventured, however, to return occasionally to Paris and lectured in his old school on Mont Sainte-Geneviève, and brought upon himself the persecution by Bernard of Clairvaux which ended in his death,

after great suffering, at the priory of St. Marcel in April, 1142, in the sixty-third year of his age.

There are, of course, many other names that could be cited; but these are amply sufficient to indicate to the reader the fact that in the period between the establishment of the Holy Roman Empire of the German Nation, by the efforts of the Frankish king and the papacy, and the Renaissance of the fifteenth century there were those who kept the light of reason from extinction.

When, however, we study closely their works, we find that their philosophy was chiefly, if not wholly, logic, in some cases based upon the logic of Aristotle and in one case, at least, upon a knowledge of Aristotle in the original. They took the major premise of the syllogism from revelation,—revelation as interpreted by the organ or agent selected by God for making known his truth to man; and then, by the mental process represented by the formula *A is B, C is A, and therefore C is B*, they drew their conclusions and elaborated the truth of revelation into its details for controlling the life and conduct of men. That they took their major premise by faith and thus made belief the basis of all knowledge is clearly stated by Archbishop Anselm in his chief work preserved for the inspection of our generation, the "*Cur Deus Homo?*" His exact words are as follows, "*Neque enim quaero intelligere ut credam, sed credo ut intelligam, nam et hoc credo, quia, nisi credidero, non intelligam.*"

There can be no mistaking the meaning of this. The whole of philosophy, according to this, consisted in drawing conclusions from the postulates of the theology established by the authorities constituted by God for revealing truth to man. As we have seen in the preceding chapter, those authorities were the Holy Roman Empire and the papacy at Rome.

Not even the brilliant Abelard ventured to assert that the

major premise in his dialectics rested upon the human reason. He insisted upon interpreting the meaning of the postulates of revelation by reason; and when confronted by the question By whose reason? and by the picture of the anarchic state of thought which would follow the claim that the reason of each human being was endowed with this authority, he appeared to waver and to incline to find refuge in the idea that the reason of Abelard alone was the proper interpreter of the truths of revelation. That, however, was no substitution of reason for revelation in the promulgation of truth, but a contention with the Pope or the Emperor concerning the organ for the announcement of God's will to man. He went so far on this line that he was charged with Sabellianism—that is, with a denial of the doctrine of the Trinity of the Godhead as taught by the papacy, and the substitution therefor of the rationalistic doctrine of the relation of the Son and the Holy Spirit to the Father, as organs or agencies for the conveyance of the Father's revelations to man—and was called sharply to account for it; but he never denied that revelation was the source of all truth and authority, and never sought to displace revelation from this supreme position by reason. He was still only logician, dialectician, and fascinating rhetorician, but not philosopher in the later sense. He was a reviver of learning and a fertile applier of learning in detail, but not an advancer of learning in fundamental principle and not a reconstructor of it on a new and more fruitful basis.

Among them all, only Scotus Erigena appears to have been in any respect an exception. He really seems to have dimly divined, five hundred years before its time, the great change which was to come in the search for truth and in the means and method of its ascertainment. It is surely very difficult, if not impossible, to explain otherwise that well-known passage in his great work "*De Divisione Naturae*" which reads,

"Auctoritas siquidem ex vera ratione processit, ratio vero nequaquam ex auctoritate. Omnis enim auctoritas, quae vera ratione non approbatur, infirma videtur esse."

He evidently gives philosophy the precedence in his thought over theology and makes theology an offshoot of philosophy, a creation of human speculation and research, a product, like every other branch of knowledge, of the reason of man. If I remember correctly, it was Froebel who said that if his ideas should be understood and adopted three hundred years after their promulgation, he would be satisfied. Even this period would not have been sufficient for the justification of Erigena's doctrine. It was at the time but a prophecy,—a true prophecy, it proved to be.

Every hint, however, of these scholastics concerning the great change in the world's civilization which was to come related to the civil or social life of man or to his religious belief, and therefore it met with prompt suppression by existing authority. The contradiction was too clear and direct not to be quickly seen and prevented from gaining any headway. In order to be successful the attempt to set reason above revelation in the discovery of truth must be made in a department of knowledge not immediately concerned with human conduct. The fundamental contradiction in systems would not be so quickly discovered, and the evidence gathered for the truth as acquired by the new method would have and exercise a more compelling impetus. Even then, however, there was danger enough, as we shall see, that rational research would be confronted by revelational authority and forced to a life-and-death struggle with it.

The personality usually mentioned as the first prophet really of the new dispensation was Roger Bacon. Born in England in the year 1214 and dying in 1294, his life practically spanned the thirteenth century. He is said by many

writers on the history of civilization to have belonged more correctly in the sixteenth century than in the thirteenth. He was educated in Oxford University and in the University of Paris and had private instruction also from such great teachers as Robert Grosseteste and De Marisco. He showed early great mechanical genius as well as intellectual independence. It was from his study of Arab authors, however, that he cultivated that independence and gave impetus to that genius. His philosophical sense rebelled against the claim that philosophy was complete in the teachings of the university at Paris. Those teachings were to him mere deductions from assumed major premises,—premises handed down in wretched translations from ancient languages which no one understood. Bacon conceived that the first step to take in the revival of learning was to master these languages in which ancient learning was contained, and the first step in the advancement of learning was the substitution of the method of experiment and induction for that of deduction. On his return to England from the Continent he became a member of the Franciscan order and began teaching in Oxford University. It was soon discovered that the new method introduced by him was threatening the fundamental principle of the old method; and the general of the Franciscan order, Bonaventura, commanded him to desist from lecturing at Oxford and betake himself to Paris and submit to the jurisdiction of the authority of the order there. He obeyed; and for some ten or a dozen years he lived in great retirement and privation, suffering the usual fate of the man who first sees the truth, or a nearer approximation to the truth than the generally held creed.

While in Oxford he had attracted the attention of the papal legate, or ambassador, in England, who afterwards became Pope under the name of Clement IV. This man of more than

ordinarily liberal views ordered Bacon to write out and forward to him a treatise on the sciences in disregard of the injunction placed upon him by his immediate superiors. Thus encouraged and protected Bacon produced, in less than two years, his three great works: the "Opus Majus," the "Opus Minus," and the "Opus Tertium." These books were sent to the Pope in the year 1267 or 1268, and in the latter year the Pope ordered his release from confinement and permitted him to return to Oxford.

He immediately recommenced his study and teaching upon the method of investigation and experiment and gave out in the year 1271 or 1272 a treatise entitled "Compendium Studii Philosophiae." This book was a severe criticism upon the ignorance as well as the immorality of the ecclesiastics and upon the method of study and teaching followed by them. The new Pope, Gregory X, differed widely in breadth of vision from his predecessor; and when, in the year 1271, Bacon caused his "Compendium Studii Philosophiae" to be published, His Eminence not only condemned these writings but caused their author to be thrown into prison, where he suffered and languished for fourteen years and became so reduced in health and strength that he died soon after liberation.

Besides writing numerous books in nearly all branches of learning, he invented many useful scientific instruments. It is even claimed by some authors that he constructed a telescope and that he invented gunpowder. In fact, the reaction against his brutal treatment attributed to him a more perfect rationality of view than is wholly justifiable. In substantiation of this assertion we have only to refer to Part II of his "Opus Majus," in which he discusses the relation between theology and philosophy, and where he claims that all truth is to be found in the sacred Scriptures and that it is the func-

tion of philosophy to trace our knowledge of natural things back to the principles contained in these. This appears much like the doctrine of Lanfranc and Anselm again. It need not astonish us, however, that we should find such passages in his works. On the other hand, it is surprising that we find so few of them in this period of emergence from the age of the theological monopoly of all knowledge, or rather of what passed for knowledge. A thorough, unprejudiced reading of all he wrote and left behind cannot but convince us that he had, for the time, a remarkably clear conception of the experimental, inductive, scientific method of search for truth, and that he was an early, if not the earliest, exponent of its application to all possible branches of learning—ethical, theological, and political as well as physical—for the discovery of the fundamental truths upon which they rested. As we have seen, he had to suffer the fate of all men so far ahead of their times,—a fate from which even the philosophers of today are not wholly exempt, despite the fact that the conviction is practically universal, in portions of the earth living under what we term modern civilization, that all truth is attained through free investigation by the human reason. Nearly twenty-five years of this rich intellectual life were passed in solitary confinement under great privation and suffering; but the spark which he lighted was never again to be extinguished, although it burned dimly for nearly two centuries before it acquired any new strength or brilliancy.

It is not the purpose of this book to attempt anything like a biography of the men whose investigations during the fifteenth, sixteenth, and seventeenth centuries led finally to the breakdown of the theological, revelational theory of all truth and to the substitution of the experimental, inductive method of inquiry in its stead. All that is sought in these pages is to make clear the distinction between the *revival* of learning

and the *advancement* of learning accomplished during the transition era from the medieval to the modern theories of the derivation of truth, and the effect of the same upon the doctrine of the sanctity of law as based on divine command issued through Pope and Emperor. It will conduce to clearness and sharp vision on this point to confine our attention to as few of these great characters as possible, provided the selection be made with care and good judgment. For the purposes alluded to, the dozen or so personalities who bore the names Columbus, Vespucci, Cabot, Da Gama, Copernicus, Tycho Brahe, Kepler, Galileo, Bacon, Descartes, Spinoza, Leibnitz, and Newton will in their experiments, their inventions, their travels and discoveries, and in their philosophical summaries amply suffice.

I have chosen these and arranged them in this order because of their superior note, of course, but also because, in addition to that, they represent the attack upon the old science and philosophy—if such terms may be applied to the theories and fancies of the period—from both the terrestrial and celestial points of view,—the first four operating as travelers and discoverers on land and sea, the second four as students of the heavenly bodies, and the last group stating and explaining the new major premises acquired by the new method as well as the method itself, and arranging in logical order the new knowledges thus attained.

The Italian Christopher Columbus, born in Genoa about 1446, is usually regarded as the man who first gave himself to the problem of proving by navigation the rotundity of the earth. He had early in life convinced himself, through profound study of the nature of force and the movements of the bodies of the universe, that such must be the case. The proposition had, however, too much of the character of an assumption to satisfy him. His mental processes would not rest fully

content until he should have established his theory as a fact or as a principle alone explanatory of all the facts relative to the given subject. The most natural and primary conclusion to which he as a traveler would come from his doctrine of the earth's rotundity was that, by starting from any one spot on the face of the globe and going straight ahead, he would finally return to that same spot, and that if he did so he would have positive proof of the spherical form of the world as a matter of fact.

For some reason or other he was not able to secure any backing for his project in Italy, and he applied to the king of Portugal and then the king and queen of Aragon and Castile. Queen Isabella was particularly impressed by his ideas and ordered ships to be built for making the experiment. Meanwhile the king had referred Columbus's cosmological doctrines to a council of learned men, so called, composed chiefly of ecclesiastics, of course; and they promptly condemned them as contradictory to the teachings of Holy Writ. From the very outset, thus, the contradiction between the two methods for the acquisition of the truth was more or less clearly understood and was bound sooner or later to come to issue.

Despite this decision of the ecclesiastics, Queen Isabella furnished Columbus with the means for making his grand experiment, and he set sail from a port near Palos in the month of August, 1492. He sailed due westward and sighted land October 12 following, after more than two months of anxiety and hardship. He supposed that he had reached the eastern coast of Asia. His theory of the earth made of it a single continent of land surrounded by continuous water. He does not seem to have considered seriously the possibility, certainly not the probability, of the existence of independent continents; and when he landed on what we now call the

island of Cuba, he supposed that he was in Japan or India. Had this been true he would have proven, as a fact, the rotundity of the earth, since these parts of Asia had been already reached by travelers going eastward from the places of departure from which he had started on his voyage westward. He does not appear to have discovered his error in regard to where he was when he returned to Spain in the spring of 1493, nor after making three succeeding voyages westward and coming upon land both in the West India Islands and upon the continent of South America (afterwards so named), nor when he undertook his fourth voyage with the better-defined purpose of finding a passage from what we now call the Gulf of Mexico into the waters beyond it,—that is, into what we at present know as the Pacific Ocean,—in which project he failed, of course, since no such passage existed.

Neither did Columbus's fellow Italian and contemporary Amerigo Vespucci succeed in establishing as a fact the idea held by him in common with Columbus that by going straight from any point on the earth's surface one would finally reach that point again, thus proving as a fact the spherical form of the earth. He saw the western continent as early as 1497, before Columbus himself did, although he never got through it nor around it into the waters beyond it, but returned to Europe and furnished the name for the new continent, whether intentionally or not.

John Cabot, likewise of Italian origin, though residing in Bristol, England, was also possessed with the idea of the earth's rotundity, and under the patronage of King Henry VII undertook to find a way to India by sailing a little more to the northwestward. He came upon the North American continent, but did not find any passage by water through or around it and returned, baffled in this respect, to England. It

is possible that he may have seen the continent of North America a few days before Vespucci did; but neither of them established the fact by experiment important to our study, namely, the spherical form of the world and therewith the theological error in cosmology upon this fundamental point.

Finally, the Portuguese Da Gama did not meet with any better success in this respect. The king, Don Emanuel, fitted him out in 1497 and sent him to find a way around Africa to India, with the idea that he might keep on straight ahead from India and reach Lisbon again. He sailed around the most southerly point of Africa in 1497, which he called the Cape of Good Hope, and then proceeded up the eastern coast of Africa and along the coast of India as far as Calicut, went, however, no farther in that direction, but returned over the same track to Portugal. He made two more voyages from that point in Europe to India around Africa, but did not undertake to find the way back to Portugal by continuing to sail eastward from India.

Thus, while the experiences of all of these explorers could be best interpreted on the theory of the rotundity of the earth, still it could not be claimed that it had been established as a fact by actually going around the world. It gave the cosmography based on divine revelation and explained by the papacy, however, a rude shock,—one from which it never recovered. And during this same period there came the new discoveries, and the new theories based thereon, of astronomy to support this new secular cosmography, which discoveries and theories we attribute roughly to Copernicus, Brahe, Kepler, and Galileo. In fact, they bear chiefly the name of Copernicus, although Kepler and Galileo did almost, if not quite, as much as Copernicus himself in the elaboration of the new celestial science.

Almost every child ten years of age in the civilized world

of today knows the chief points of the Copernican system of the universe,—namely, the diurnal rotation of the rotund earth on its own axis, its annual revolution and the revolution of the other planets around the sun, and the revolution of the entire solar system and numerous stellar systems around some central point of the entire universe, while only the moon really revolves around the earth, the revolution of the other celestial bodies around it being only an appearance produced by the rotation of the earth on its own axis,—but very few adults at the present day realize fully the tremendous upheaval in thought and feeling which the displacement of the old Ptolemaic theory by this new doctrine of the construction of all things brought about.

In the first place, what was called the Ptolemaic system was regarded as the system taught by the Bible through the papal interpretation, the truth as imparted to man through divine revelation. To hold and teach any other view was, therefore, not only false but was heresy of the rankest nature. This alone was sufficient to warrant dealing with such a doctrine and with its promulgators as hostile to the divine order of the universe and the almighty source of all things.

In the second place, it was this upon a scale and to a degree that threatened to bring down in one grand crash the entire system of philosophy and civilization which European man had built up. Consider for a moment how it affected the position of the earth in the system of the universe. Instead of its being the center of all things, the body around which all other bodies moved, upon which they rendered attendance and to which they all did service, it became, in the new system, one of the smallest of the many worlds of the universe, a mere outlying spot. Men began to query whether the God who created it, being also the creator of all the other worlds and systems of worlds visible throughout space all about them,

estimated man on this earth for so much in the divine order of things as was represented to them by the imperial-papal doctrine of the source of truth and the authority of law.

As the proof grew stronger and greater in volume from year to year that the Bible as interpreted by the Pope and the Emperor was false in its cosmography and astronomy, the suspicion arose, in most minds capable of thinking, that the papal-imperial system of truth and law might be equally erroneous in many other respects,—yea, in all other respects. That the ecclesiastical authorities were quick to perceive the growing menace of the new scientific developments to the system upon which they had organized the European world is to be concluded from their treatment of the personalities whom I have cited as the leaders in the formulation of the new ideas.

Copernicus, himself, a native and resident of the city of Thorn in Prussia (1473–1543), very clearly avoided persecution by the ecclesiastical authorities in that he delayed the publication of his great work, "*De Revolutionibus Orbium Caelestium*," almost until the day of his death, and dedicated it to Pope Paul III as an evidence that he was not conscious that it contained any heretical teaching.

His successors, however, were not so shrewd nor so fortunate. Kepler, the Württemberger of Tübingen, who was appointed by the faculty of the University of Tübingen to the professorship of astronomy in the university at Gratz in 1594, was in less than five years, when he was only a little over twenty-five years of age, ordered by the archduke Ferdinand to leave his chair. A year or two later we find him in trouble with the theological faculty at his Alma Mater, Tübingen, because he felt that he could no longer subscribe to the creed of the Church in all respects. The university was practically closed against him. Ten years after this, while

residing at Linz, his life was made a burden to him by the persecutions of one Hitzler, the priest of his parish, who even went so far as to exclude him from the rites of the Church, in which Hitzler was sustained by the Württemberg authorities. In 1613, backed by the Emperor Matthias, he presented himself before the imperial diet at Ratisbon for the purpose of securing the introduction of the Gregorian calendar into the Holy Roman Empire, but had not the influence sufficient to accomplish the change, even with the imperial support. At length the Emperor Ferdinand II shook him off altogether, and he found final employment in the service of the duke of Friedland, the noted Wallenstein, for a short time, until death put an end to his sufferings near the close of the year 1630.

It was the case of Galileo, however, which demonstrated most clearly the hostility between the theology of the papacy and the new scientific development. Galileo did not advance the science of astronomy much beyond where it was left by Kepler; but he invented or constructed the instruments whereby the doctrines of Copernicus and Kepler were proven to be the facts and principles of the universe, and whereby the conflict between the methods employed in the philosophy of these men and that of the ecclesiastics for the attainment of truth was more clearly set forth.

When but little more than twenty-five years of age, he published his work on the center of gravity in solids and established the first principle of dynamics. He won thereby the hostility of the Aristotelians and ecclesiastics and was compelled to leave Pisa and return to Florence. This was about the year 1591. Through the influence of the marquis of Pesaro he was now made professor of mathematics in the University of Padua, and taught here for some eighteen or twenty years, with great success and distinction, the thou-

sands of students who sought his instruction. During this time he continued making his researches and inventing instruments such as his compass, thermometer, and telescope of thirty-two magnifying power, by which the secrets of the heavens were laid open. In 1610 he discovered with his new telescope the satellites of Jupiter, which was practically sure proof of the Copernican theory of the universe and gave him such renown that the grand duke of Tuscany called him back to Florence, as mathematician and philosopher at his court. One year later he went by invitation to Rome, and in the garden of the Quirinal he demonstrated his discoveries. This procedure in full view of St. Peter's and the Vatican was a bit too daring. It led to a comparison of his doctrines with the astronomy and cosmography of the Church, and on the twenty-fourth day of February, 1616, the Copernican system as expounded by him was denounced by the Sacred College at Rome as both heresy and false philosophy. By the command of the Pope, Paul V, he was required to report at the palace of Cardinal Bellarmine, the chief of the Sacred College, where he was officially admonished by the cardinal to cease defending, teaching, or holding the Copernican doctrine. It is claimed by some of the Church historians that this action on the part of the Sacred College was never confirmed by Pope Paul V or any of his successors. However that may be, it is a true reflection of the situation and of the struggle now initiated between the discoveries made by the human reason and the claimed divine revelations made to the Pope or Emperor.

This conflict was brought to direct issue some sixteen years later, in 1632, by the publication of his great work "*Dialogo dei Due Massimi Sistemi del Mondo*," in which he expounded with perfect clearness and detail the Copernican system and embraced it unreservedly. Within eight months after publica-

tion the sale of the book was prohibited by the ecclesiastical authorities, and he was summoned by the Inquisition to appear in Rome for trial for heresy by that noted, not to say notorious, court. He was ill at the time, and was unable to take the journey to Rome until the beginning of the next year. In June of 1633 he was finally brought to trial and was required by the sentence pronounced upon him to cease teaching the Copernican philosophy of the universe and recant his belief in it. He is said to have obeyed both parts of the sentence and to have gone back to Florence, where he lived a few years, under the constant surveillance of the Inquisition, and died a broken man, with great suffering and in great privation. His life covered exactly the period between the death of Michelangelo and the birth of Isaac Newton.

Almost contemporary with Galileo was Francis Bacon (1561-1626), who upon the basis of the scientific experiments and discoveries proceeded to construct the new philosophy of investigation and induction. Feeble in physical health, but marvelous in his mentality, he had, before reaching his twenty-fifth year, discovered the fatal cause of the barrenness of medieval knowledge and education, and had suggested the founding of a college within the organization of Cambridge University, his own Alma Mater, for the advancement of knowledge. On account of his great attainments in philosophy and law he was called by Queen Elizabeth to her side as chief counselor, and from this position, as well as from that of a member of Parliament, he displayed those wonderful powers as a debater and orator for which Ben Jonson accords him such unstinted praise.

It was in the whirl of this active political life that he gave out his great works in foundation of the new philosophy: in 1597 his "Religious Meditations," and in 1605 his "Advancement of Learning," which latter work marked him easily as

England's leading man of letters and led to his rapid advancement in office. He became Lord Chancellor, Lord Keeper of the Seals, and a Peer of the Realm under the title of Baron of Verulam, Viscount St. Albans. At last, in 1620, he produced the crowning work of his great life, the "*Novum Organum*," as the introduction, so to speak, of the "*Instauratio Magna*." In these great treatises he expounds the new method employed by the scientists of the fifteenth and sixteenth centuries in the search for truth,—the method of investigation by experiment in the determination of facts, and of advancement to principles by the comparison and adjustment of facts and the inductions therefrom; and then gathers together, in philosophical classification, the results reached to that time in all branches of learning. Under the command of this masterful generalissimo the principles and forces of modern civilization were thus arrayed in serried ranks and in battle formation for the great struggle with the philosophy and the organization of the medieval world.

Bacon's work and reputation were not confined to England. He wrote in correct and even elegant Latin, and was therefore readily understood by scholars in all parts of continental Europe.

He found a great disciple in René Descartes, born in La Haye, Touraine, somewhere in the year 1596, and educated in the Jesuit college of La Flèche. For some reason not definitely known Descartes left France and became a soldier in the Dutch army. Military life proved little to his taste; and in a very short time he withdrew from the same, and devoted himself to travel, study, and authorship. In 1637 appeared his first great treatise, entitled "*Discours de la Méthode*," which was in practically exact line with Bacon's "*Novum Organum*." In 1641 he published his "*Meditationes de Prima Philosophia*," and finally, in 1644, his most profound and

celebrated work, "*Principia Philosophiae*," was given to the world. Very little difference in fundamentals can be found between the philosophy of Lord Bacon and that of Descartes. In both cases it is knowledge based on experience in the acquisition of facts and on inductive reasoning, from facts thus gathered and classified, to principles. It stood out in both cases in equally bold opposition to the ecclesiastical, papal philosophy of truth through divine revelation to certain chosen organs and the derivations therefrom by syllogistic logic. Nevertheless, Descartes's more precise and pointed expressions gave his works the wider distribution, and led to the attachment of his name to the new philosophy rather more generally than that of Bacon.

Finally, Leibnitz and Newton not only demonstrated, with ever-greater clearness than any who had gone before, the differences between the new method of investigation and instruction and the old, but made the fruitfulness of it irrefutably convincing by the inventions and discoveries which attach to their names. For example, Newton not only discovered the law of gravitation and invented the binomial theorem, but he constructed the forty-power magnifying telescope and produced his great treatise the "*Principia*," which went over the whole science of physics as then understood and advanced the same by many stages; while Leibnitz worked out the differential and integral calculus in pure science and formed the plan for the establishment of the Academy of Sciences in Berlin and for a like institution at St. Petersburg.

Newton and Leibnitz were practically contemporaries,—both born in the fifth decade of the seventeenth century,—and both lived to a good age. The secular power of both England and northern Germany, at the period in which they were active, had become Protestant, and therefore they did

not suffer persecution for their opinions; but, with the exception of Newton, all four of the personages whom I have cited as the great philosophers of the Renaissance were allowed to die in want and obscurity.

Their work, however, had been done and well done. The new rationalistic philosophy had demonstrated both the barrenness and falsity of the old medieval system and opened the way for the new organization of the world educationally, religiously, morally, and politically. These historic movements will be treated in this order, although it must be conceded that in exact completeness of succession this is the logical order of human evolution rather than the actual. In actual fulfillment and realization we must expect to find and shall find, especially as we approach the frontiers of transition from one to the other, these different spheres of man's activity confounded and commingled, always more or less, and sometimes to a degree reaching far beyond thought and discussion and producing violence and war.

CHAPTER VI

THE REFORMATION AND THE SANCTITY OF LAW

When a student approaches the history of the Reformation from this point of view, he is immediately impressed with the feeling that the reformers, especially the earlier ones, manifested quite distinctly the inclination to avoid coming to issue with the authorities, civil or ecclesiastical, upon the subject. They displayed more than reluctance in the matter. It may even be said that something more of the nature of timidity seemed to hold them in check. This is to be seen in their nervous anxiety to confine their attacks to the life, discipline, and morals of the ecclesiastics and let the philosophy of the system alone.

The student of this period cannot, however, help seeing that they appear to be driven by some demon, whether willingly or unwillingly, to advance from one stage to another in this movement until at last they find themselves up against the profound question of the source of truth and therefore, finally, of law. After it had been demonstrated by the geographers and the astronomers that the revelations claimed by the ecclesiastical authority within their spheres were incorrect and erroneous, it was not possible that the newly awakened spirit of man should not seek to test the accuracy and sufficiency of what was held to be revealed truth in other lines and directions, and then to question the legitimacy of the authority upon which it claimed to rest. It was the urge of nature and history, which nothing arbitrary, artificial, or unnatural could long prevent.

Let us follow briefly the gropings of these men, in order that we may become fully aware of the existence of a force in the affairs of men, as well as in the processes of what we call the material universe, which has a way of its own and will realize the same sooner or later, and which it behooves men to understand and not oppose or attempt to circumvent, but, on the other hand, to aid in its evolution and application. There is no lesson of history or philosophy which men need to keep so clearly and so constantly in mind as this.

It is not easy to discover the earliest traces of a movement of this magnitude or, as for that, of any movement; but one will not go far wrong in taking the life and works of John Wycliffe as illustrating the difficulties in the way of the reformers and the successions of advance in the steps taken by them toward the ultimate end of dethroning the doctrine of special revelation regarding the source of truth and of en-throning universal reason and conscience in its stead.

Wycliffe's activities belong within the last half of the fourteenth century. They antedate, therefore, the discoveries of Columbus, Copernicus, and Galileo. We must not, therefore, expect to find any conscious application by him of the new Baconian philosophy to the problems of theology and ethics. He is brought forward here as the forerunner of those who did do that, and as an evidence that the new thought was universal in its nature and destined to act regeneratively in every direction sooner or later.

Wycliffe was born in Yorkshire, somewhere near Barnard Castle,—the home of the Baliols, the founders of Balliol College at Oxford. This circumstance and his friendship with the Baliol family seem to have determined his connection with that college as a student and afterwards as its master. From such a vantage ground he was enabled to make pupils and produce propaganda for extending his influence far and

near. At this very moment, too, the papacy, driven from Rome, had taken refuge in Avignon and had become in some degree, at least, subject to the jurisdiction of the Capetians,—a fact which inclined the English government and statesmen to limit the papal power in the British Isles. Another circumstance in his career at this juncture was his appointment by the English king Edward III as court chaplain. Altogether he, though a Roman priest, was pretty fully committed to the interests of his royal master.

In the year 1366 the Parliament passed an act repudiating the payment of tribute to the Pope. It seems that the king was favorable to this movement and that Wycliffe had composed the argument on which His Majesty rested, in a pamphlet entitled "*Determinatio quaedam de Dominio.*" In this tract it is that we find the first distinct attempt on the part of the civil authority for centuries to redraw, so to speak, the line between civil and ecclesiastical functions and to set up a sovereign sphere for the civil power. This meant, of course, the repudiation of the doctrine of political and juristic truth by revelation through the papacy alone and its agents. This attitude on the part of Wycliffe is to be inferred from the propositions which he laid down in the "*De Dominio*," one of which was that the spiritual and civil authorities have entirely separate spheres, and that should the spiritual overstep its own natural bounds and come into contact with the civil it thereby makes itself subject to the jurisdiction of the civil. It is true that the influence of the notorious duke of Lancaster, John of Gaunt, was all-powerful over the English court at this moment, but he too was friendly to Wycliffe's protectors against the Roman authority. Thus sustained, he continued to preach and spread his doctrine of emancipation of the State in the civil sphere from the power of the Church, and of the control of the State over the temporalities of the

clergy, until finally, in the beginning of the year 1377, the Archbishop of Canterbury, the Pope's representative in England, under pressure from the other bishops, summoned him to appear for trial. The English historians inform us that he appeared at St. Paul's on the nineteenth of February of that year and was accompanied by the marshal of England, Lord Percy, the duke of Lancaster, and a prominent representative from each of the chief mendicant orders existing in England. This meant that Wycliffe had the backing of the royal government. It was so understood by the common people of London, who immediately pronounced it an insult to their bishop in his own church and riotously broke up the hearing before it had fairly begun.

This was followed some three months later by the issue of a number of bulls by Pope Gregory XI, who had now returned from Avignon to Rome with his court, condemning and denouncing the conclusions logically derived from Wycliffe's propositions. These documents were addressed to the Archbishop of Canterbury, the bishop of London, Oxford University, and the king. The Pope had ordered, in one of these bulls, the arrest of Wycliffe. In this he seems not to have understood the strength of the English feeling of independence against the exercise of any power over the personal liberty of any Englishman by any authority having its central seat outside of England.

It is usually taught by the chroniclers of these events that the university merely ordered him to keep his lodgings for a short time. The king died before making any answer, but the mother of the young king Richard II, who had for the moment the chief place in the council, also stood by Wycliffe; and finally, when the Parliament met in the autumn of the same year (1377), it manifested its approval of the Wycliffian principles regarding the distinction between Church and State

and the emancipation of the State from control by God through revelations transmitted through the Pope and his agents.

He now felt emboldened to lay before Parliament his reply to all the charges made by the Pope in the several documents of accusation. His arguments and answers were pronounced sound by Oxford University and were evidently now satisfactory to Parliament and the great mass of the people. He appeared, however, early the next year, before a council of the ecclesiastics who had been active in transmitting the Pope's bulls, and gave here a very full and profound exposition and defense of his views concerning the relations of Church and State. He was again interrupted by a mob, and the sitting adjourned without taking any steps of a decided nature whatever.

During this year (1378) happened the double election to the papal chair, whereby two men were claiming the position of God's vicerent on earth at the same time,—Urban VI and Clement VII. This situation was, of course, most demoralizing to the sanctity of law and order proceeding from God through the Pope to man, and it furnished the opportunity for attack upon the internal system of the Church as well as its relation to the State in the Middle Ages. Down to this juncture Wycliffe's strictures had appertained, as we have seen, to the latter point practically entirely. His work was rather political reform than Church, or religious, reform; and wherever it was religious reform, it was the reform of clerical discipline and conduct rather than of doctrine. Now he resolved to take a very bold step in the other direction. He resolved to introduce the laymen directly to the Christian Bible by translating the great basis of their faith—the original revelation from God, as they had been taught to believe and did believe—into the vernacular, into the language in

which every layman might read it for himself. With the help of two friends,—possibly pupils,—Nicholas Hereford and John Purvey, he rapidly completed the work, and before the beginning of the fifteenth century every Englishman who could read was in a position to know whether what his priest was telling him had the warrant of the great revelation upon which all claimed to rest.

It is not necessary to our purpose for us to follow the work of Wycliffe any further. In fact, he did not live to pursue it much further. He died even before the great translation was entirely revised. But he had laid the foundation not only for the reform of Church but also of State. The conservatism of his own country was too strong for all this to be realized first there, although he had been enabled to go as far as he did by political support. The government allowed, however, the decree of the Council of Constance of 1415 to be executed against him, though he had been dead for more than twenty-five years,—namely, that his remains should be dug up out of his grave at Lutterworth and consigned to the flames.

This only helped, however, to carry his fame and his doctrines over to the Continent, where Huss reproduced them and then Luther, who at last drew the inevitable conclusions from them which go to make up the religious and theological reformation of the sixteenth century, the history of which, and the effects of which upon the sanctity of law as based on the theory of the revelation of all truth through the Pope and his agencies, we will now proceed to consider.

Being some fifteen years of age at the date of Wycliffe's death, Huss probably had some acquaintance with the Englishman's writings during the last years of the latter's life. At any rate, he manifested knowledge of the same so soon as he began to give lectures in the university at Prague, which

was around the year 1398. Some three years later he appears as dean of the philosophical faculty, and occupied the office of rector during the first semester of the year 1402-1403. From these influential positions he was able to make the philosophy of Wycliffe widely known to the students coming from all parts of Europe to attend the university, and also to guide them to the study of the Scriptures in the original texts as well as in the recent translations.

It is not claimed that Huss ever made any substantial advance beyond Wycliffe in the reform of doctrine; but he certainly made the new philosophy a living force—a live wire, as we would now say—in the very center of Europe. During the first years of his pedagogical activity he expressed himself with such caution that he seems to have escaped the suspicion of heresy. It was in the year 1408 that the university took its first really firm and determined stand in regard to Wycliffism, and this stand was no more than that certain of his propositions should not be taught erroneously or heretically, intimating thus that there was a sense in which they were correct and orthodox.

During this same year, however, the clergy of the archdiocese of Prague laid a complaint before the archbishop, charging Huss with using scandalous language against the morals and the conduct of his brother clergymen. He undertook to justify his expositions to the archbishop, with the result that he was forbidden by His Eminence to exercise any priestly functions throughout the archdiocese. We find from the chronicles of the university, however, that Huss was again chosen its rector for the winter semester of 1409-1410. At the same time we are informed that the archbishop appointed an inquisitor, whose duty it should be to look into the charges against Huss of teaching Wycliffian philosophy in an heretical sense and to make report of the result of his inquiries.

It is quite probable that the inquisitor acted promptly and that his findings were unfavorable to Huss, as the new Pope, Alexander V, issued a bull in the last half of December, 1409, ordering the recantation of all the Wycliffian heresies, and the surrender of all his writings held by anybody within the archdiocese of Prague, and the cessation of all preaching in new localities—the chapel where Huss preached being one of these. This decree was met by riotous opposition, which the archbishop answered by causing some hundreds of volumes of Wycliffian literature to be burned upon the grounds of the archiepiscopal palace and pronouncing sentence of excommunication against Huss and a number of his followers. Huss continued, however, preaching in his chapel and expounding and recommending the philosophy of Wycliffe wherever he could get a hearing, while the king of Bohemia, Wenceslaus, and many of the nobles joined in a petition to the Pope to withdraw the bull of Alexander V, his predecessor, against the reformer.

Huss, however, by increased radicalness in his views and greater recklessness in their expression cooled the ardor of his friends among the noble laity and gradually opened the way for the triumph of his enemies. The pulpit being closed against him, he now gave himself to correspondence and authorship and in this way furnished his persecutors with the written material for proceeding against him.

During the year 1413 the Emperor Sigismund and the Pope, now John XXIII, arranged for a grand council to deal with the Huss heresy and other important matters of Church and State,—the council at Constance. Huss was invited to attend, rather than summoned, a consideration which led him to believe that he would be fairly heard and justly treated. In the latter part of the year 1414 he arrived in Constance and was almost immediately seized and thrown into close con-

finement. It was June of the next year, 1415, before his case came to trial. The trial would be considered at this day a good deal of a mockery. It consisted chiefly in reading to him extracts from his great work "De Ecclesia" and demanding of him their recantation, while he simply reaffirmed his propositions, giving reasons, with the offer to renounce the former when the latter should be controverted.

The council could not, of course, admit this method of dealing with the subject without renouncing its own divine authority in the revelation and guardianship of truth, and the decision which it reached was that Huss should recant his doctrines publicly and promise never again to teach them or to hold them. These things he declined to do,—in fact, declared that he was unable to do them. He was then, in the presence of the Emperor and the full council, condemned to be burned to death, and led in silent prayer to the stake, where he died upholding the rights of private judgment in the interpretation of Holy Writ.

The arbitrary treatment of Huss at Constance before his execution excited intense feeling in Bohemia,—in fact, throughout the whole of the northern half of the Empire; and when news of his burning was spread abroad, a wave of wrath swept over a large part of Europe, such as is generally followed by outbursts of lawlessness and violence. Some five hundred of the most important personages in Bohemia formed a league, or party, for the maintenance of the liberty of preaching on their estates. The organic instrument of this union contained one most significant clause for the study of the philosophy of the sanctity of law. It was this, namely, that these great feudatories pledged themselves to each other to submit to the commands of Pope, council, or bishop only in so far as these commands might be in accord with God's will and the teachings of Holy Writ.

In all this they were backed up by a great mass of the common people always ready and often too ready to use violence in the realization of their will. Already upon receipt of the tidings of Huss's execution, which they regarded as nothing less than judicial murder, they had introduced a reign of terror in a large part of Bohemia, putting a number of priests to death and driving the archbishop out of Prague; and they now stood ready to follow the leadership of this league of nobles with little question or thought as to where it would land the system of law and order,—in fact, the civilization of Europe.

But if now this party, or league, should refuse obedience to Pope or bishop or council unless their commands were in accord with the will of God or the precepts of the Bible, how did they propose to determine this harmony or lack of harmony? Of course, they could not leave the solution of this all-embracing question to the party accused of committing the breach, and that party was practically the entire existing system of authority; for while the Emperor was not mentioned in their declaration of the right of disobedience, yet he was certainly understood as included, since he had summoned the council which condemned Huss, and was present at the very sitting when sentence was pronounced. There is a clause in the instrument which appears to attribute to the rector and the doctors of divinity of the University of Prague the authority to determine this great question of interpretation, but this was a crude solution of that all-important matter and was felt to be so at the time. To substitute the authority of the rector and doctors of divinity of the University of Prague for that of the papacy of the Christian Church and of the imperium of the Holy Roman Empire of the German Nation could not have appeared to be anything short of heresy and rebellion. Unless the Hussites could find a better

solution of that question than this, they certainly would meet with most determined opposition.

In fact, a counter league was immediately organized, and in February, 1416, the feudal lords who had founded the Hussite League were summoned to appear before the council on charges, practically, of disloyalty to Church and State. This meant that they must either back down or undertake civil war. Passion was running too high for the former, especially after the burning of Jerome, Huss's colleague, in the spring of 1416, by order of the council still in session; and so Europe drifted into the civil war of 1420 to 1431.

The Hussites were composed of strong men, under the lead of brave and conscientious captains directed at first by the noted soldier John Ziska; and they not only held their own, but they inflicted several severe defeats upon the Emperor's soldiers, especially the one at Taus in the year 1431, which led to the negotiations beginning with the council of Basel of that year and terminating in the so-named "Compactata" of the year 1433, according to which the more moderate Hussites were recognized as loyal subjects of the Empire and granted—in rather general, not to say ambiguous, language, indeed—the rights which they had claimed and which rested on their own interpretation of the Bible, in place of the interpretation of Pope, Emperor, bishop, or council.

The inclination of the authorities to so manipulate these ambiguities as to minimize all these concessions provoked the Hussites to resume the appeal to force. They had lost their great leader Ziska in the early part of the war, and in the fierce conflict at Hrib they now lost Ziska's successor Procopius and suffered a crushing defeat. Moreover the party, or league, had already become divided into two factions,—conservatives and radicals,—and after the defeat at Hrib were

no longer able to organize themselves anew and present a united front; and so the movement for the emancipation of the human reason from the thralls of the claimed divine authority of Church and State appeared slowly and gradually to subside and even to react during the latter half of the century. At the beginning of the new century, the sixteenth, the system of the papacy and Holy Roman imperium seemed to be more strongly intrenched than at any time during the hundred years after Wycliffe began to write and teach.

But this appearance was illusory. The seed had been planted and the soil had been fertilized by the ashes and the blood of the martyrs, and the occasion was bound to recur sooner or later for a new growth and harvest. Moreover, during the last half of the fifteenth century and the first years of the sixteenth there lived and wrote such men as Reuchlin, Erasmus, Rubianus, and Von Hutten,—to mention no others,—who delivered attack after attack with the weapons of logic and ridicule upon the doctrine that either Pope or council was the exclusive organ of divine revelation; while De Cusa and Laurentius Valla, by their profound historical investigations, completely shattered the claim of the papacy to any temporal power based on the fiction of the “donation of the Roman Emperor Constantine.” At last, in the year 1511, came the famous protest of a vast body of Germans to the Emperor Maximilian I against the abuses committed by the popes and the curia, which prepared Europe for the advent of Luther and Melanchthon and Zwingli and Cranmer and Calvin.

Just one hundred years before this event the Emperor Sigismund had made Frederick von Hohenzollern the margrave of Brandenburg, which district was a property of his family, the Luxemburgers. Four years later the Emperor conferred upon the Hohenzollern the title and office of the “Elector of Brandenburg.” Ecclesiastically it lay in the

archbishopric of Magdeburg, and in the first years of the sixteenth century we find the brother of the then ruling elector occupying the archbishop's chair. This signified that this prelate, a papal agent, would have the support of the elector. At the moment the archbishop was indebted to the papal treasury in the sum of 30,000 guldens for his pallium; and the Pope, Leo X, engaged just then in the rebuilding of St. Peter's on the most magnificent scale, and in great need of money, not only required this payment from Archbishop Albert, but imposed on the archbishop the duty of effecting the sale of a new issue of indulgences throughout a large part of the northern dioceses of the Empire. In this work the archbishop employed one John Tetzel, a Dominican brother, who seems to have had exceedingly little cleverness in his operations and who excited the hostility of Luther, then professor in the university at Wittenberg, by his rudeness and unconscionable rapacity.

On the thirty-first day of October, 1517, Luther nailed his famous ninety-five theses on the door of the castle church at Wittenberg. These recited all of the principal abuses of authority committed by the popes and the curia and denounced the claim of either of these to being the sole organ of the revelation of God's will to man for his government and direction. These theses were composed in Latin and not intended by their author for popular reading. He sent a copy of them to the archbishop of Magdeburg, with the earnest request that this high Church official should restrain Tetzel from his practices; and in some way the agents of the press, recently established, got hold of them, translated and published them, and set all of central Europe in a ferment. The Leipzig disputation between Eck and Luther followed; and close upon that came Luther's famous "Address to the German Nobility," in which he set forth the despotic nature of the system of

authority based on divine revelation to the Pope and executed by the Pope and his agents in the government and direction of men, and besought them to protect their subjects from the exercise of the same.

In this stand he had the countenance of his university, and of his prince, the elector of Saxony, Frederick the Wise; and at length he brought the archbishop of Magdeburg (the Hohenzollern Albert) and the latter's relative the elector of Brandenburg over to his view. This latter was the matter of greatest importance, as it signified that the powerful kingdom of Prussia, now forming within the Holy Roman Empire, was destined to become the stalwart support of Lutheranism in Europe.

At first the Pope did not realize the serious nature of the Wittenberg revolt. He thought that it was only another outbreak of petty discontent, which would soon pass. But when a copy of the "Address to the German Nobility" was placed in his hands, he felt that the time had come for action on his part; and, on the fifteenth of June, 1520, he issued a bull of excommunication against Luther as a dangerous heretic, to have effect within a hundred days unless within that period he should recant his errors.

Luther allowed the hundred days to run out without making any answer; and then, on December tenth following, in the presence of his colleagues and pupils of the university, he publicly burned a copy of the papal bull and of the books of canon law. This was his answer, and it was nothing less than a denial of the sanctity of law as based on the old system of divine revelation for the government of man through the Pope and his agents. The gage of battle was thrown down, and at last the world was to witness the death struggle of the old with a new order of civilization.

The young Emperor Charles V summoned the bold priest

to appear before the diet of the Empire at Worms,—giving him a safe conduct, which was scrupulously observed,—and to give answer to the charges of heresy and rebellion against him. Disregarding the pleadings of his friends, he went and faced the assembled authorities of Church and State, of Christendom and the Holy Roman Empire; and when called upon to recant his errors, he courageously restated and reaffirmed his principles, and then made the famous declaration of April 18, 1521, which announced the approach of the modern world in the spiritual as well as the physical sphere,—the world in which truth was to be sought by the human reason and conscience acting upon individual responsibility to the universal, of which each is the equally authorized representative. He, as all of the reformers going before him, contemporary with him, or immediately following him, assumed the truth of the Bible as divine revelation; but it was the Bible as understood and interpreted by each for himself, and not as handed down to him by Pope or curia, bishop or council.

There is not much doubt that, but for the safe conduct of the Emperor, Luther would have suffered the fate of Huss and Jerome for his daring, which may almost be termed temerity. The diet later pronounced the ban of the Empire against him and made him thus an outlaw in the Christian world. His return to Wittenberg was, however, secured to him by his safe conduct, and the good elector of Saxony had him seized and hidden away in the castle of the Wartburg, where he rested until he might have opportunity to think out the effect of his principles upon the order of the world. When it appeared to him that, as interpreted by some of his more radical supporters, they threatened revolution and anarchy, he left his hiding-place, in somewhat less than a year, and at the risk of his own life and liberty gave himself

to the work of advising moderation in the exercise of private judgment in the search for truth.

While in the Wartburg, Luther had already begun the herculean task of translating the Bible into the German language. His main difficulty was in the fact that he had, in very considerable degree, to invent the language in which to express the Scriptural ideas. I say *create* largely the Scriptural terminology because it was really more than an adjustment of existing parts of speech to new ideas. Any student of the history of the development of Teutonic philology is amazed at the wonderful growth of the German language in the century between the death of Luther and the birth of Leibnitz, not only in grammatical accuracy but also in wealth of words and phrases, the most of which is to be ascribed to Luther's translation of the Testaments.

When Leibnitz came upon the scene, and after him Kant and Fichte and Schelling and Hegel, they found a language sufficiently rich and perfect to serve as a capital vehicle of transmission of their thoughts to the students of the new philosophy. Luther's scholarly friend Philip Melancthon, professor of Greek in the university at Wittenberg, was his chief colleague in the great work of language-making. It is difficult to determine to which of the two the greater credit should be accorded. They differed considerably in the quality of their culture. The former was more virile and racy, the latter more elegant and refined. Between them they furnished about all that was necessary to transform a crude, hard, and scanty dialect into the most perfectly constructed language of philosophy in the Europe of the eighteenth and nineteenth centuries.

It was while in the midst of this great work that Luther, as already indicated, was made aware of the effect of his teachings upon the uneducated and half-educated masses. It cer-

tainly can arouse no wonder in the mind of the impartial student of today that, in the close connection between Church and State, religion and law, obtaining in the Middle Ages, from the point of view of their source and authority, the common man should have understood the Lutheran doctrine to apply to law as well as religion and have considered himself as much at liberty to determine what law he would obey as what creed he would believe. The matter of real astonishment to such a student is, rather, that such scholars as Luther and Melancthon and their colleagues should not have realized this probability at the outset.

While still in the Wartburg he was also appraised of the fact that his friend and follower Carlstadt had started out upon a much more radical course in the reform of doctrine than he himself had recommended. It was to meet and check this movement that he left this safe retreat, against the wish and advice of his great patron, the elector, and took the risk of meeting the fate of Huss and Jerome. Engaged in this serious work, he came up against the conspiracy of the knight-hood,—the feudatories, by military tenure, of the Emperor and the princes,—under the lead of Franz von Sickingen, to throw off the princely authority. Whether this revolt was directed against the Emperor as well as against the princes was not at the moment very clear. It was logical that it should work out to be so. In fact, it was illogical that it should not, since the theory of the Empire was, as we have so often seen, the procession of all authority from God to the Emperor immediately, or to the Pope immediately and from the Pope to the Emperor, and then from the Emperor to the princes, the governors of the several districts included in the Empire.

Before, however, this movement had gotten well under way, the far more menacing revolt of the peasantry, known as the insurrection of 1524, broke out. During this and the

following year it attained most alarming proportions, and for a short time it appeared as if it might overthrow all existing authority and reduce middle Europe to chaos. Luther threw the entire weight of his advice and influence against the movement and induced the great middle class to join hands with the Emperor and the princes to quell the rebellion. The authorities acted with great vigor and harshness and attained, finally, success, which they employed with the cruelty of desperation, even beheading the leader of the revolt.

But for the assistance rendered by Luther and those who regarded his word and advice as gospel truth, it is more than possible that this peasant war would have become a triumphant revolution. There is much evidence to show that Luther was not without sympathy for the insurrectionists. It is difficult to comprehend that he could have been. The movement was in line with his doctrine, but it was premature and was pursued with means he did not approve. It cost him a severe struggle with himself to take part in its inhuman suppression. The result was the prevention of anarchy and the temporary reestablishment of order, but it gave the Reformation a twist and a character which its ideal principle did not justify and which almost made a papacy and a curia in each of the states in which it gained a foothold.

The suppression of the Peasant Rebellion was followed by the session of the diet of the Empire at Speyer in 1529, which enacted a measure that prohibited the introduction of the reformed doctrines into the states where they had not at that date been accepted, and secured to the members of the old confession full liberty of worship in those in which they had been. The Lutherans could only protest against this law, which attitude it was that gave them the name of "Protestants." With them, however, the law on this subject had lost its sanctity, and was destined to be disobeyed.

The Protestant princes now formed the so-called Smalcaldic League for a united defense against the papacy and the Empire, and secured an arrangement in 1532 called the Peace of Nuremberg, according to which the Protestants were left momentarily at peace,—not, indeed, so much in consequence of the agreement as because of the necessity under which the imperial government found itself of husbanding all of its strength for dealing with the Turkish movements westward. This is evidenced by the fact that so soon as the Emperor was in some degree relieved from this menace, he resolved upon coercing the Protestants to return to the old Church. It came again thus to civil war in the year 1546, the so-called Smalcaldic War, in which the Emperor, sustained by the king of France, Francis I, and by Maurice, duke of Saxony, appeared to be on the eve of success when the Pope, fearing probably that the reëstablished and restrengthened imperial power and authority might lead to the revival of the claim of the Emperor to superiority over the Pope as the immediate organ of divine revelation for the government of man, manifested his disfavor toward the imperial policy in dealing with the Protestants as being too liberal. Moreover, the powerful duke of Saxony and the elector of Brandenburg, the Hohenzollern prince, had now become members of the Smalcaldic League and took the field against the Emperor. Their success led to the Peace of Augsburg of 1555, according to which each prince was authorized to choose the religion of his land, the choice being limited to the creed of Rome and the Protestant creed as approved by the diet at Augsburg; that is, Lutheranism as formulated by Melancthon, Luther himself having passed from earth some eight or nine years before.

As we have repeatedly demonstrated, the theory of the Christian papacy and of the Holy Roman Empire of the German Nation did not logically permit the existence of any

other church or state in the world, much less in Europe. Nevertheless, the course of European history from the downfall of the Roman Empire to the outbreak of the Reformation had brought a number of political organizations into being which did not acknowledge any political subordination to the Holy Roman Empire of the German Nation, although most of them professed the Roman Christian religion and recognized the authority over them of the Roman Christian Church.

How far this ecclesiastical authority reached and what it implied were no more clearly understood nor distinctly defined in any of them than in the Holy Roman Empire of the German Nation. However, it was certainly supposable that a religious movement which should be tolerated in the latter would be allowed, so far as the Church was concerned, to exist in the former. In fact, it was to be expected that the political effects of such a movement would find in such states less hindrance from the papacy than in the Holy Roman Empire of the German Nation. In other words, it was to be expected that the religious reformation in such states would develop even more quickly and decidedly into something like political revolution than in the Holy Roman Empire. The most cursory examination of the course of events in these states will convince us of the correctness of such forecasts.

Let us begin with the movement in the Swiss cantons directed by Ulrich Zwingli, one of Luther's contemporaries, the center of whose activities was the city of Zürich and the date 1518-1531. He soon outran Luther in doctrinal divergence from the Papal Church and in what is far more important to our subject, namely, in political resistance against the Holy Roman Empire of the German Nation. As early as 1529 he had a plan for throwing off the sovereignty of the Empire in the Swiss cantons, republicanizing their governments, and forming them into a confederation. He did not

hesitate to bring the matter to the issue of battle, and was himself slain on the field of Kappel in the year 1531. A temporary check was put by this defeat on the advance of Protestantism in the Swiss communities, and the loss of the great leader appeared for the moment irreparable.

Five years later, however, there appeared in the city of Geneva a veritable genius in the domains of divinity and law, who, in addition to his natural talent for both of these great subjects, had received the most perfect education in both which the world then afforded, the Frenchman John Calvin. Under the preaching of Farel the people had already become Protestants and, besides throwing off the authority of the Papal Church, had also plunged into more or less of civil chaos. Law seemed to have lost its sanctity altogether.

The situation which Calvin was called upon to meet was one, therefore, not only of great difficulty but of much hardship, not to say of considerable peril. Only after very serious and extended deliberation did he yield to the importunings of Farel and take up his residence in Geneva as pastor of a Protestant community. He introduced among his parishioners a system of doctrine so logically intolerant, and of worship and discipline so rigid and exacting, that in a very short time a democratic outburst drove him and Farel and their co-workers out of the city.

For three years he remained away, resisting every approach for compromise, until at last the social, religious, political, and business conditions became so desperate that the inhabitants of the city recalled him and practically submitted to his assumption of all authority of every kind and over every subject. His rule, both ecclesiastical and civil, was a benevolent despotism, but nevertheless a despotism of the most rigid—not to say, at times, cruel—sort. He was both pope and emperor in the city and neighborhood, subor-

dinating the civil to the ecclesiastical authority in a more complete fashion than any occupant of St. Peter's chair had ever succeeded in doing, and executing his commands with a vigor and promptness and an impartiality which finally overcame all disrespect and disobedience. The sanctity of the law was reëstablished on the basis of divinity of source, morality of content, and certainty of execution. Under his régime Geneva, from having been a most licentious, vicious, and immoral community, became the model city of the age; and its union with the other Swiss cantons was the chief force in the production of the Switzerland of modern times, the resort of warring states and factions when in search of a place and a surrounding where peace may be found and errors and enmities converted into understandings and friendships.

In Europe north of the Holy Roman Empire—that is, in what we now call Denmark, Norway, Sweden, and the British Empire—the governments seized upon the Reformation as a powerful means of establishing and consolidating the absoluteness of the king over both the bishops and the nobles. The House of Oldenburg in Denmark, for example, in the person of Christian III, simply expelled the power of the papacy, confiscated the wealth of the Church, bribed the nobles with a part of it, kept the most of it for the royal exchequer, relieved the people of the burden of paying tribute to what was now represented to them as a foreign power, and thus transformed the universal world Church into a national church. The change in theological doctrine was not very great and was altogether secondary to the change in Church government. The headship of the Church gave to the edicts of the king in each case the sanctity of religion (of the established religion) in the eyes of the people, and secured for them an obedience on the part of the people not then, at least, otherwise attainable. These movements all occurred within

the first half of the sixteenth century, during the same period in which the above-described transformations were taking place within the Holy Roman Empire.

In what we now know as the Netherlands, events in realization of the Reformation followed a somewhat different course from that pursued anywhere else. The seventeen localities, or provinces, of which they were composed were not only connected with the Holy Roman Empire, but were, under Charles V, subject to his local government and feudal supremacy. When this mighty emperor abdicated his throne in 1555, the electoral princes of the Holy Roman Empire chose Ferdinand I, of the Austrian branch of the Hapsburgs, Emperor, while Charles V devolved his inheritances, among them these districts, upon his son, Philip II.

The Reformation, first in the Lutheran and then in the Calvinistic form, had already made considerable advance among the people as a purely religious and doctrinal movement. Philip II had, however, remarked the political tendencies to which it had given rise in other parts of Europe, and he immediately set to work to stamp it out of these districts. He appointed his half-sister, Margaret of Parma, as his regent there and gave her for her chief adviser Cardinal Granville, the clever bishop of Arras. He also fitted her out with an army of some ten thousand Spanish troops and with a well-organized branch of the Inquisition. Three of the most prominent nobles of this territory were left as members of the council for the moment; namely, the counts Egmont and Horn and the Prince of Orange. The repressive measures against the Protestants, introduced immediately by the regent and executed through the Inquisition and the army, roused great feeling among the common people, which was increased in violence and organized for action by the retirement of Egmont, Horn, and William of Orange from the council.

The nobles generally now organized themselves for resistance and found the Protestants among the people ready to follow them. The king sent the Duke of Alva to occupy the regency. He seized the counts Egmont and Horn and caused them to be put to death. This occurred in the year 1568, and was immediately followed by the organization of the Protestants under William of Orange for throwing off the sovereignty of the king ultimately, by expelling the Duke of Alva immediately under pretense of loyalty to the king, whose authority was represented as menaced by the atrocities of his wicked agent. The capture of the city of Briel by the insurgents encouraged them to form the Utrecht Union, in 1579, out of the seven northern provinces, which union became the independent Dutch republic, independent both of the kingdom of Spain and of the Empire.

William was assassinated in 1584; but his work lived on in the Protestant state of Holland, first organized as a republic with himself as stadholder, or governor, and then as a kingdom with his descendants occupying the throne. Until the royal authority became established and consolidated, law lost its sanctity, and chaos threatened to hold sway. With a king as head both of the reformed Church and of the government, law regained its principle of authority, as based upon the divinity of its source, and political and juristic reorganization was assured.

Finally the governments of France and Spain undertook to take advantage of the Reformation to strengthen their powers, somewhat after the example of Henry VIII in England,—not to the extent, however, of the king in each proclaiming himself to be the head of the Church in his state and the supreme organ of divine revelation therein for the government of his subjects (ousting thus completely the papacy), but rather in the modified form of the king declar-

ing himself to be the sole organ within his state through whom the Pope could reach his subjects in the transmission of the revelations of the divine will to them. The effect of this doctrine would practically be, not only to free the king from any subordination whatever to the Emperor of the Holy Roman Empire, as the sole organ in the Christian world through whom the divine will should be transmitted—either directly, or indirectly by papal mediation—for the government of man, but to provide each king or ruler with a sort of veto on the papal transmissions within his state.

No opposition was to be expected from the Pope in regard to the first part of this program. It was certainly logical that, if the divine commands for human government were transmitted through the Pope to the Emperor of the Holy Roman Empire, as the popes claimed and succeeded in maintaining, they might also be to such other secular rulers as the popes might choose. It seemed only necessary that these other rulers should remain quiet about the second part of their project when approaching the Pope and let it work itself out, incidentally, in order to attain their purpose. The French king was not entirely discreet about this at the outset, and was quickly made to see his error. He promptly made up for it by withdrawing any suggestions which might have any appearance of a limitation on the papal authority in France and by introducing and carrying out such a persecution of the Protestants as drove most of them out of France.

Notwithstanding all this, however, the kings of France never succeeded in reëstablishing the sanctity of the royal law in the same degree of strength, on the basis of divinity in source, as before. The seeds of political revolution were scattered here and there in France, as elsewhere, during the period of the Reformation, and, in consequence of it, through their growth—slow as it was—steadily undermined

the sanctity of law by the disintegration of the foundation on which it claimed to rest.

At the beginning of the seventeenth century there was little question that the political dissolution of Europe in consequence of the Reformation, and of the new philosophy being formed under its influence and the influence of scientific discoveries, was leading to general political revolution; that is, to general war, both internecine and interstate.

It began with the revolt of the Protestants in Bohemia against the Emperor Ferdinand II, who was at the same time the king of Bohemia, in the year 1618. They assumed to confer the Bohemian kingship on the elector palatine, the son-in-law of the king of England, James I. The Emperor marched a powerful army into Bohemia and devastated it from one end to the other. From a thriving community of some four millions of inhabitants the land was reduced, in about ten years, to less than one million. The Emperor also fell upon the Palatinate of the Rhine, whose prince had been called by the Bohemians to be their king, and devastated it in like manner and transferred the electoral office of the count to the duke of Bavaria.

The count palatine turned to England for help, and in the year 1625 not only England but also Denmark and Holland came to his aid. The war became thus a foreign as well as a civil war. The Emperor had by this time found two more capable commanders for his troops,—namely, Wallenstein and Tilly,—and he furnished them with soldiers of a mercenary character from all parts of his dominions and authorized them to do what they liked. They carried destruction and practiced plunder everywhere, and made it manifest that the destruction of all Protestants was their aim and that of their master.

Then it was that the electors of Brandenburg and of Saxony

came to the front and turned finally to Gustavus Adolphus of Sweden for succor. This combination was effected in 1631 and resulted in the overthrow of the Emperor's armies and in the downfall of both Wallenstein and Tilly; but in the great battle—the battle of Lützen—where this occurred, the brave and capable Swedish king lost his life.

The result of this latter catastrophe was that the imperial forces were again victorious in the battle at Nordlingen, and the Protestants now turned to France, a Catholic power, for aid against the Emperor. This was good evidence that religious considerations had lost their influence, at least with the French rulers, and that political aims and purposes had come to the front. The French king's policy was simply the destruction or reduction of the Hapsburg power and authority, and he would employ any means at hand to accomplish it.

The chief adviser of the French king at this moment was Cardinal Richelieu, a professed churchman but a shrewder politician; and he led the French kings, Louis XIII and Louis XIV, into the policy of intervention on the side of the Protestants in the Holy Roman Empire. The French arms were easily victorious, but it was not simply victory that the French kings sought. It was the destruction of the Empire, as the great Christian state of the world. They therefore waged war upon the civil population as well as the military, and made little distinction between Catholics and Protestants among these. An example of this was the destruction of such cities as Augsburg and such principalities as Württemberg, in south Germany, where the people adhered more strongly to the old Church than in the North. Five years before the war ended, the population of Württemberg had been reduced to about one tenth of what it was at the outbreak of the war in 1618.

At length, in 1648, the complete exhaustion of the Empire

brought the Peace of Westphalia, which for our subject, the sanctity of the law, is the great milestone in European history between the medieval and modern periods. It was through participation in this Thirty Years' War that the French king Louis XIV was able to extend the boundaries of France in the east beyond the natural frontiers of the Vosges and Ardennes barriers and incorporate German territory and a German population into the French kingdom, that Sweden got a foothold on the south side of the Baltic in German districts, that Holland and Switzerland became independent of the Empire, and that France and Sweden assumed the right of interfering in the internal affairs of the Empire as guarantors of the peace—it was all this, but it was something still far more important to our subject. It was the complete overthrow of the system of the Papal Church and the Holy Roman Empire of the German Nation as the Church and State of the Christian world—with their authority and law based on the divine will as revealed to Pope and Emperor, or Pope or Emperor, in the government and conduct of mankind—and the substitution therefor of—what? So important is this question in the elucidation of our subject that we must devote an entire division of this work to its answer.

CHAPTER VII

THE REVOLUTION IN ENGLAND

For three hundred years civilized man has been searching for the solution of the question proposed in the last words of the last chapter and appears to be farther away from his goal today than fifty years ago. The chief reason for this is, of course, the habit of man to work out his destiny unconsciously, semiconsciously, or at best, quasi-consciously. He starts things generally before he is quite ready. Something almost always arises to furnish the occasion for action before the actors are fully prepared to show their hands, before they have completely arranged their hands for the game. And so, in the matter with which we are dealing, we must expect that before the Reformation shall have run its full course and period, the revolution would be somewhere precipitated, and where more naturally than in England? We have seen in the last chapter how Henry VIII sought by means of the Reformation to find a basis for his sovereignty which would furnish his law with a sanction sufficient to secure obedience to it. This was the deep meaning of the king's headship of the Church, the organ for the revelation of the divine will in the government of man and the regulation of his conduct. That there was such a divine will for that government and the regulation of that conduct was a doctrine which had been, for eight centuries, inculcated into European humanity by the Papal Church and the Holy Roman Empire. It was at the beginning of the seventeenth century about as near to a universal creed as anything could well be. The only ques-

tion, down to that time, which had really arisen was what or who was the organ through which that will revealed itself. We have followed in some detail the contention between the Pope and the Emperor upon that subject; and we have now come to the stage in the development of the problem where the kings of France had repudiated the claims of the Emperor entirely, while the English king had rejected those of the Pope also and had asserted his own immediacy to the divine will in its revelation for the government of man.

In order to comprehend with any correctness and fullness the inner meaning of these great movements termed the revolutions, it is necessary that the student should free himself from the usual pessimistic view indulged in by the present age regarding the character and purposes of kings and princes. In many, if not in most, cases these personages have labored earnestly and conscientiously for the organization of states and the establishment of law and order and beneficial co-operation among men, and have been little more, if any more, controlled in their work by selfish aims, greed, and cruel dispositions than the elected officials of the so-called republics. With this more benevolent conception of the nature and the duties of the Tudor kings and princes, and of the great problem which confronted them of finding a sanction for the law in the legitimacy of its source, we shall be more likely to get an insight into the truth of history and the course of its evolution than by wasting our time and energies in meaningless vituperation and abuse.

Elizabeth took up the great issue where her father left it and with a like understanding of it. She sought to bring Ireland under the rule of her house and to establish Protestantism therein as the State religion, whereof the king or queen was the head, and succeeded in considerable measure. Then came James I, who was already king of the Scots and under

whom, thus, the British Isles were united in one state, 1603-1625. So soon as he became the head of the Church of England, he formed the plan for bringing Scotland into the same ecclesiastical system with England. In Scotland, as we have seen, Protestantism in the Calvinistic phase prevailed. The new king summoned a conference of the bishops of the English Church and the elders of the Scottish Kirk, with the hope and purpose of carrying out his plan for the establishment of the Episcopal system, with the king as its head, throughout his entire realm. He presided over this assembly, known as the Hampton Court Conference, himself and manifested from the first moment his favor toward the bishops of the English, or Anglican, faith and his disfavor toward the Calvinists and the Papists. Among other things, he authorized a new version of the Bible, the so-called King James Version, as the foundation of the State-Church system of Great Britain. He intrusted this great work to those who were favorable to the Episcopal system and who might be, therefore, suspected of leaning toward such shadings in their translations and interpretations as would justify their theology. The Calvinists, with their Presbyterian organization, had not, down to the date of the Hampton Court Conference, denied all authority to the king in their government; but from the moment when he was regarded by them as planning to introduce the episcopal organization into the Scottish Kirk, they became, in fact, even more hostile than the Papists. In principle they were such from the first. In principle the Episcopal system of England only needed, so far as government was concerned, that the king should acknowledge the Pope as the primal organ through which the divine revelation reached the king, and the issue between Anglicanism and Romanism would have been solved. As we know, this was the way in which Louis XIV met and overcame the difficulty. It is not improbable that

James seriously considered attempting the like measure. He for a long time essayed to bring about an understanding with the Hapsburg king of Spain, Philip IV, by a marriage between his son and heir, Charles I, and King Philip's sister Maria. The Parliament evidently regarded such a consummation as a step in a dangerous direction, and opposed it so vigorously and continuously that James finally gave way and allowed his plan of Anglicizing the Scottish Kirk to rest in abeyance.

On the accession of Charles there came to the British throne a much stronger intellect and will, together with a greater cleverness in their employment, than possessed by James I. He had, naturally, the same conception of the source of sovereignty and law as his father and was evidently determined from the first to secure the sanction of divine revelation for his government. It must be remembered that at this period the bishops held seats in the House of Lords and could be counted on to sustain the king in his claim. Nevertheless Parliament succeeded, by taking advantage of the king's needs in his war with France, in extorting from Charles the famous Petition of Rights of the year 1628, which defined some of the most important elements of individual liberty against the king's government. This was of itself a severe blow, if not a death blow, to the king's sovereignty by divine grace and revelation; for even if the Parliament held that the source of law was divine revelation, it claimed by this act to be the organ of transmission of that revelation to British subjects. The king must have comprehended—in some measure, at least—the profound significance of this attitude of Parliament; for he made use of his power to dissolve Parliament and of preventing its action by not summoning it to assemble.

King Charles held out in this condition of affairs for nearly a dozen years, all the while busying himself with the task of

creating or reviving a general belief in the doctrine of the papacy and the Holy Roman Empire of the procession of sovereignty, government, and law from a divine source through divinely appointed organs of revelation, with the qualification that in the British Isles the divine commands reached the British subjects through the organ of the British kingship. He organized and reorganized the court of Star Chamber out of the membership of his own Privy Council, with one of his disciples in political philosophy, Wentworth, earl of Strafford, as its president, and the Court of High Commission, consisting of bishops and archbishops of his own way of thinking, with the Archbishop of Canterbury—Laud, the primate of the Anglican Church—as its head. By means of these two organizations and the military commandership, the king administered the government and indoctrinated his subjects in the belief of the divine source of his sovereignty.

At length, in the year 1637, the king felt that he was strong enough and sufficiently sustained to deal with the Scottish Kirk by forcing on it the Episcopal organization. The Scots rose against this movement almost as one man. They formed what is known in their history as "the Solemn League and Covenant," organized themselves into an army of well-equipped and well-disciplined soldiers, and in the year 1640 marched into England.

The king believed that he could rely upon Parliament for aid in such a crisis as this and called its members to assemble; and then, like a bolt from the skies, came the evidence that he had entirely misconceived the temper of his subjects. This body began with the abolition of Star Chamber and High Commission and the impeachment of both Strafford and Laud, the immediate conviction of Strafford under bill of attainder for high treason, the adoption of a rule that Parliament then convened should neither be dissolved nor prorogued

without its own consent, the passage of a bill ousting and excluding the bishops from seats in the House of Lords, the appointment of a Committee of Public Safety, the calling-out of the militia of the country, and the designation of the earl of Essex as their commander in chief. At the same time the Irish rose in revolt, and Parliament would not trust the king with an army for the purpose even of quelling this insurrection, fearing that he would use it to expel the Parliament itself.

Instead of the king sending the members of Parliament to their homes, he himself was compelled to set up his government at Oxford, and to see Parliament, in possession of the capital, coming to an understanding with the Scots, making Presbyterianism the ecclesiastical system of England, and depriving all of the Anglican clergy of their livings who refused to sign the Covenant with the Scots. In a word, the king found himself before the end of the year 1642 face to face with revolution. All that was needed now was a capable and determined military leader of the Parliamentary forces to bring the conflict to decision.

Neither Lord Essex nor Fairfax, his successor, was the man for this. They were more or less under the influence of the *esprit du corps* of their class and revered too much the royal person to proceed with that reckless disregard of consequences necessary to victory in war, especially civil war. It was historic destiny, however, that the proper personage should sooner or later appear. In 1643 this "man on horse-back" was descried approaching at the head of a body of independents in religion whom he had organized into a regiment of invincible soldiers,—Oliver Cromwell, a gentleman of Huntingdonshire and a sometime member of the House of Commons, and his "Ironsides." It was chiefly by their resolute action that the royal forces were defeated at Marston Moor, in 1644, and the king put to flight.

Under the prestige of this victory the entire Parliamentary army was given into the hands of Cromwell and his lieutenants for organization, training, and discipline. With this army the great leader inflicted an irreparable defeat upon the royal army at Naseby, in June, 1645.

The king now turned to the Scots, hoping for better terms from them than from the English, and surrendered his person to their army at Newark in 1646. This signified that in his opinion the Presbyterianism of the Scots was now a more conservative system than the creed of the Independents.

If he expected protection of his person by them, he was sadly disappointed, as they immediately turned him over to the English. At first he appeared to be under control of Parliament, but in a few months the army took him into military custody. A force of Scottish Royalists, under lead of the duke of Hamilton, at last undertook his deliverance. This ill-starred move brought things to a crisis. The Cromwellian army not only defeated the Scottish force but seized entire control of Parliament, closed the House of Lords, drove about a hundred conservative members out of the House of Commons, and through the House of Commons constituted a High Court of Justice for the trial of the king. This "Rump Parliament," rump court, and rump procedure made short work with His Majesty when he declined to recognize their jurisdiction over him. He was condemned quickly, and beheaded in front of his own residence on the thirtieth day of January, 1649.

At first there was still the House of Commons, which appointed an executive committee under the presidency of Bradshaw to administer the government. But, as we have seen, this was a "rump" body after it had been purged by the army. Everywhere in Ireland, Scotland, and England there was unrest and riot, threatening chaos. There was only one way out, and that was for Cromwell with his army to

seize the government. In 1653 he dissolved the existing Parliament and summoned a new House of Commons, elected under control of the army. This body, named the Little Parliament in British history, made Cromwell the executive power in the government, under the title of "Lord Protector."

For five years now he pursued with great success the work of consolidating England, Scotland, and Ireland into one national state; and in giving the British Commonwealth such an international standing as it had never before enjoyed; and at the end of his life so preëminent was his popularity and prestige that his son Richard succeeded him without any opposition worth noting. Such was briefly the course of the English, or British, Revolution. It now remains for us to examine critically the philosophical import of what had taken place during this world-eventful era in British history.

In the first place, if there had ever been any connection legal, political, or moral with the Holy Roman Empire of the German Nation, as the theory of the Empire logically required, it was now completely severed, and any procession of authority from a divine source through the Emperor to the king was no longer to be thought of. In the second place, the doctrine of the papacy asserting the claim of the popes to act as the sole organ for the revelation and interpretation of the divine will throughout the world was now definitely set aside, both in spiritual and civil relations, within Great Britain. And, lastly, the assumption by the king of the authority of both Pope and Emperor as the organ of revelation of the divine commands was likewise pronounced false and blasphemous. The sanctity of the law from the divinity of its origin and from its transmission through the organs of revelation, to which European belief through eight hundred years of history attributed authority, was lost,—was in Great Britain completely and forever lost.

But now what was to take the place of this all-embracing philosophy, this hoary scheme of morals, sovereignty, and government, evolved by the great minds of more than ten centuries and sanctified by the belief and practice of the masses of all Europe for that period? In Great Britain there existed two organizations, either of which might conceivably claim to hold the exalted position of the interpreter of the national consciousness of truth and right and the enforcer of the national will in giving the findings of that consciousness the sanctity of law. They were the army, operating under the direction of its commanding general, and the Parliament, under the lead of the prime minister. For fifty years from the death of Cromwell we must follow the struggle between them for the mastery before we can claim that Britain had solved, even roughly, the great problem.

First, the organization of the nation in the army seemed to be getting the upper hand. Richard Cromwell succeeded his father in the office of Protector as surely, unquestionably, and unopposedly as a crown prince had come to follow a king in the philosophy of royalism. But the council of the higher officers of the army began to assume an independence over against the commander in chief not usual, we may even say not tolerable. They went so far as to call an assembly of Parliament, the Rump Parliament, in less than a year after Richard Cromwell's accession to the Protectorate. Richard promptly, and probably quite wisely, decided to abandon the office rather than to enter upon a period of contention with his military staff regarding its relations to him, on the one side, and to Parliament, on the other, which would more likely have ended in his own decapitation than otherwise. He resigned, and Lambert, his chief of staff, succeeded him in command of the army.

The question now was whether Lambert, as commander in

chief of the army, was Protector. Lambert was quickly made to understand that such was not the case. General Monk, the commander of the troops in Scotland, gave in his adherence to the view held by the Parliament that in order that the general of the army should become Protector he must be chosen by that body to the office. Monk, without waiting to be ordered by his commander in chief, marched his troops to London and put himself in immediate communication with Parliament. The navy took the same stand; and before the end of the year the national Church was in line with these three elements of influence and power, giving to them their moral unity and religious force. Nothing could resist this combination, and nobody dared to try. Lambert simply fled, and Parliament called the heir of Charles I to the throne. He answered the summons immediately and was crowned a national king before the year 1660 came to its close.

From the vantage ground of the present it would appear that Charles II had an unrivaled opportunity for the organization of a truly national State. The Tudors, the first Stuarts, and the Cromwells had given to Great Britain substantially its proper geographical limits, its ecclesiastical independence, its economic independence and unity, its civil liberty, and its governmental unity and vigor. It would seem that Charles had only to preserve agreement with Parliament and harmony with the national Church in order to solve every other problem which would or could arise in the development and organization of the new system of sovereignty, government, and liberty for which the genius of the age was working. It is fairly certain, however, that he did not possess that indispensable quality for great success, namely, the ability to grasp and exploit the requirements of a crucial situation. This is not a harsh criticism of his shortcomings. One is sometimes inclined to feel that the trouble was more with his character

than his intellect, that his life at the court of his relative Louis XIV had corrupted him morally, that he was—or, maybe, had become—false and disingenuous, and more inclined to trickery and sharp practice than to open honesty and square dealing. The key to the situation was his ecclesiastical position and relations. While head of the Anglican Church, whose membership included the majority of his subjects, he appears to have been at heart a Roman Catholic. But whether his Roman Catholicism was based upon religious conviction, or upon some notion that it would be a better support for his royal authority than he could get out of the headship of a national church, has never been with complete certainty made out. It looks very much, however, as if, during his stay in France at the court of Versailles, he had become quite thoroughly convinced that the papal doctrine of the procession of all authority from the will of God through revelation to the Pontiff, and through the Pontiff to the king, was either the truth or the doctrine upon which to rest the royal authority, and that the headship of the Anglican Church was too new and too undefined and undeveloped to take its place. We know, at least, that he, after some ten years' experience with the national Church system of Britain, entered into a treaty with Louis XIV—the Treaty of Dover—in which he engaged to declare himself a Roman Catholic so soon as it should appear prudent for him to do so, and also to join Louis in the war which the latter was planning against Holland, and therefor was to receive from Louis a large subsidy and also military assistance in case of any revolutionary movements in Britain which might be provoked by this virtual sale of Britain's foreign policy to France.

In the year 1672 Louis declared war on Holland and demanded of Charles the promised assistance. He, Charles, immediately entered upon the invasion of the Netherlands, and

as commander in chief in war issued an order suspending the operation of all of the statutes of Parliament against the Roman Catholics. He was, however, immediately made to understand that he was at least proceeding too rapidly. The whole Anglican Church and a practically unanimous Parliament began to treat him as a foreign usurper. Backed up by the national Church, Parliament now organized an executive committee in its own midst, and from the leading characters among its own membership, which took in hand the administration of law and government in time of war as well as of peace and reduced the king's council by means of its activities, sustained by Parliament, to a body with little more than a shadow of authority. This committee took the name of "Cabinet," with a chairman entitled the "Prime Minister," who, though nominally selected by the king, was really chosen by the House of Commons.

The king withdrew with great promptness the obnoxious order which had precipitated this crisis,—to no effect, however. The deed was done,—done for all time,—and from 1672 onward we have the two fundamental organizations of the British nation: the army, with the king as its head, and Parliament, with the Cabinet culminating in the prime minister, nominally subject to the king but in reality superior in authority. With these we must always, of course, connect the national Church, which sometimes supported the one and sometimes the other, but which gradually settled down to its more natural union with the latter as the prime representative of British nationalism over against the too frequently manifested internationalism of the crown.

Parliament now enacted the famous statute known as the Test Act of 1673, which excluded all dissenters from office; and the king did not dare to veto it, although it had the effect, among other things, of forcing the resignation of his own

brother, the Duke of York and probable crown prince, from the office of Lord High Admiral in the navy, as being a Roman Catholic.

During the same period the earl of Danby, the then chairman of the Cabinet, or prime minister, set the precedent of the responsibility of the prime minister to the House of Commons, instead of to the king, so firmly and distinctly that it was never afterwards successfully questioned.

Matters actually went to such a pitch during the decade between 1670 and 1680 that a bill was introduced into Parliament excluding the king's brother, James, from the succession to the throne because of his being a Roman Catholic,—or a papist, as the Roman Catholic began now to be termed. The measure was with difficulty defeated, and but for the opposition to it of the very able Lord Halifax it would probably have become law. As it was defeated, James became king, on the death of Charles in 1685, without having renounced his Roman Catholicism and while still nominally the head of the national Church. It was this glaring inconsistency which contributed as much as anything else, probably more than anything else, to his dethronement.

He immediately set on foot his schemes for restoring Roman Catholicism in its pre-Reformation status. He apparently saw security to the throne and sanctity to the law in the old doctrine of the procession of authority to the Pope and king by revelation, and only therein. He was more pronounced in this view than were his own Roman Catholic subjects,—we might almost say than the Pope himself. This is to be concluded from the fact that from the first years of his reign there was to be observed a continuous drift of the more moderate papists away from the support of the king and the army over to the side of the Parliament, as the prime organ of sovereignty and law in the national British state.

In less than two years from the date of the second James's accession a revolutionary party had formed and organized itself, and had invited William, Prince of Orange, the Protestant stadholder of Holland, husband of James's eldest daughter, Mary, to come over to England and seize the throne. In 1688 William arrived at Torbay and was met and joined by a number of England's most capable, important, and prominent characters, among them Lord Churchill, known later as the famous Duke of Marlborough, the commander in chief of the royal forces. King James did not attempt any resistance. He simply fled to France; and Parliament conferred the crown of England on William and Mary, and the Estates of Scotland immediately followed suit.

Meanwhile, with the assistance of Louis XIV, James had organized some opposition to William in Ireland; but the victory of the new king in the battle of Boyne settled the question of the continued union of Ireland with England and Scotland in the perfecting of the British national state. Before the end of the century Scottish and Irish representatives were in their seats in the national Parliament in London; and the "United Kingdom of Great Britain and Ireland" stood there, at the beginning of the eighteenth century, as the first realized answer to the great question of modern history, namely, as to what was to take the place of the hoary doctrine of the Middle Ages regarding the source and nature of sovereignty and the sanctity of law.

That answer was that it must be the nation, within its natural geographical limits, organized in the House of Commons of the central Parliament, under the chieftaincy of the prime minister,—the commander, for the moment, of the majority therein because of being the most truthful representative and the most successful formulator of the consensus of its views. Every other condition, circumstance, organiza-

tion, institution, trait, belief, or opinion was secondary to these fundamental requirements, or even more remote from them than that.

Two things are especially to be remarked in this concrete answer to the great question of the age. They are that religion, creed, or theological doctrine plays no primary part in this answer, and also that ethnographical variety or ethnological differences are likewise subordinate. The judgment of the constituencies of the House of Commons in the selection of their representatives in that body, and the reason and conscience of those representatives in their interpretation of truth, right, and policy and in their formulation of the same into commands having the compelling force of law over the consciences and wills of men, have taken the place completely of the old world-philosophy of the one divine source of truth and right and their impartation to man by way of revelation through divinely selected agencies—the papacy and the imperium—or those authorized by one of these thereto. This did not signify that the English voter or Parliamentary member might not be influenced by his Anglicanism in his ratiocinations, nor the Scotchman by his Presbyterianism, nor the Irishman by his Roman Catholicism. It meant only that his reason was no longer required by any external pressure to submit to such influences when they should run contrary to its own intuitions. In other words, that his reason might dominate these influences rather than that they should always dominate it.

Of even more importance to our study is the evident subordination of the ethnographical or ethnological elements in the formation of the British nation to the geographical and economic elements. The Teuton, the Celt, the Latin, and the various ethnical products from the amalgamation of these through the centuries, were disregarded racially in the forma-

tion of the national organizations. Ethnical distinctions were treated as something which might be overcome by education and intercourse,—education more and more uniform and intercourse more and more constant and active,—while geographical and economic differences were more deeply grounded in nature, more difficult to overcome, and more distinctly recognizable. It would be well should the state-builders of today have more clearly and constantly in mind this first great precedent in the organization of the modern national state, as contrasted with the internationalism of the universal papal-imperial state, on the one hand, and the world anarchy of the petty racial states' system, on the other. At any rate, let us, in the further study of the evolution of the philosophy of nationalism of the era succeeding and supplanting the papism and universal imperialism of the centuries between the ninth and the nineteenth, always keep before us the lesson of the first great example in the formation of the modern national state, the kingdom of Great Britain and Ireland, which preceded every other by at least one hundred years in attaining something like completeness.

CHAPTER VIII

THE POLITICAL GEOGRAPHY OF THE EUROPEAN CONTINENT IN 1648

The first results of the downfall of the papal-imperial system on the Continent were extremely disheartening. No great political philosopher seemed, at the moment, to have thought out the theory of national independence which was to take its place and give Europe a new organization. It was true that the Continentals had the English-British precedent before their eyes, only recently acted out; and the student wonders that it did not have more influence and guiding power. There is no question that it had some, but in the beginning not much; and it worked very slowly, hesitatingly, and half-heartedly.

In the extreme west and southwest, conditions were more favorable in some respects for the production of the new national system—up to a certain point, at least—than farther eastward. The Pyrenean peninsula, for example, had, under the Spanish branch of the Hapsburgs, almost attained its real national political boundaries before the middle of the seventeenth century. Indeed, by the union of Castile, Aragon, Narvarre, and Leon, accomplished finally in the middle of the sixteenth century, the entire peninsula had become united into one state, except the district in the extreme west along the Atlantic, between the rivers Minho and Douro, which had been, before the end of the twelfth century, a part of the territory of the kingdom of Castile and Leon, and was conferred by Alfonso VI, the king of that state, upon his son-

in-law, Henry of Burgundy, as a county within the kingdom. The son of this Henry, who bore the title of "Alphonso I of Portugal," appears to have been a great military character and to have rendered very important service in defending Christian Europe against the inrush of the Moors from Africa across the narrow waters of the Mediterranean at Gibraltar. He was the hero of the decisive battle at Ourique in 1139, and was hailed by his troops as king and later confirmed by the Pope in the assumption of this dignity. Two hundred years of struggle now followed, between these counts of a county of Castile and Leon and the kings of that state, before Portugal was finally acknowledged by that kingdom to be an independent kingdom; but before the beginning of the sixteenth century that had been completely accomplished and was in the year 1648 the sole obstacle in the way of making the political lines correspond with the lines of physical and economic geography in the peninsula of the southwest of the European continent.

The kingdom of Spain had, however, other difficulties in the way of the attainment of a real national existence at this date. Its king was ruler over the lower part of the middle-Mediterranean peninsula, the kingdom of Naples, and over the Netherlands on the North Sea; and Spain's great colonial empire in America had been already established. The effect of such entanglements was, unavoidably, too great absorption of the attention of the government in the affairs of countries and peoples outside of the Pyrenean peninsula. Instead of regarding the real prosperity and civilization of the Spanish state as consisting first of all in the development of the capacities of the homeland, the view became more and more pronounced that these blessings were to be sought rather in the exploitation of foreign lands and peoples. Under such conditions the evolution of a national consciousness of truth, right,

and policy found many and great difficulties to encounter. It proceeded, of course, very slowly and has hardly been arrived at even today.

Very similar has been the experience of the next great nation to the north of Spain in forming itself. In the middle of the seventeenth century it had arrived at its natural limits on the south, west, and, for the most part, on the north, but on the east and northeast it manifested the imperfection of not having reached to its proper frontier in one part and of going beyond it in another. Geographically the Alps, the Jura, and the Vosges and Ardennes mountains, reaching from the Mediterranean on the south to about the present city of Liège on the north, constitute the real national boundary of this territorial unit on the east. From the north extremity of the Ardennes to the North Sea this indication of nature fails, and the line of shortest distance from this point to the North Sea, touching the same around the mouth of the Scheldt, must be taken as its proper prolongation. In the middle of the seventeenth century the king of France, Louis XIV, reached across the Vosges to the Rhine and seized the district, known as Alsace, extending between these mountains and this river from Basel to below Strasbourg, while at the same date the Spanish Netherlands ate into the proper territorial limits of his state farther northward. In addition to these difficulties France, as well as Great Britain and Spain, had become a colonial empire, and at the time of the Westphalian peace in 1648 was already settled upon the lower and middle St. Lawrence, in North America. The questions of foreign policy engendered by these conditions were having the same effect in about equal degree in France as in Spain, to the detriment of a real national development in thought or deed.

It must be, moreover, always remembered that both Spain and France had resisted the nationalizing influence of the

Reformation in theological theory and ecclesiastical organization and were still, preponderantly at least, international in Church and faith, for the full appreciation of the influence of which attitude of mind upon political development we must view the situation from the standpoint of the papal-imperialism of the Middle Ages.

When we cross the Rhine, however, and look eastward or northward or southward, we come upon the real anarchy produced by the downfall of the papal-imperial system.

In the Italian peninsula the Holy Roman Empire had given way to some five to eight principal states and an additional number of petty mock formations,—chief among them all being the Papal States, cutting across this territory about midway between its northern and southern extremities, and standing for the doctrine of the papal-imperial system regarding the origin of truth, right, government, and law and their transmission to man as eternal and unchangeable. The division of this geographical unit into so great a number of political sovereignties was certainly a sufficient obstacle in the way of the development of a true national state here, even if all of them had rested upon the same fundamental principle in their political philosophy. But when we consider that the chief one among them was the originator and everlasting exponent of the doctrine regarding the source and sanctity of government and law from which all the others had broken away, then we may begin to appreciate the almost insurmountable difficulties with which the Italian statesmen have been compelled to contend in developing the national state of Italy. Here was a state not only equal in the exercise of sovereign authority to each and every one of the others, but claiming to be the original source and support of *their* authority and regarding them as its agencies in compelling the conformance of the conduct of men to the will of

God as revealed through it to them,—a state sustained too, in this claim, more or less fully by all the people of Europe west of the Vistula and the Pruth who had not embraced Protestantism; and, finally, a state which alone among them all everywhere claimed to have the power of consigning to punishment after death for disobedience during this life, furnishing thus its commands with a compelling power over the consciences of all believers which gave them a sanctity not otherwise attainable. All these things must be kept clearly in mind as we follow the evolution of the national state of Italy and also that of all the other states of Europe in which the Papal Church was the controlling institution,—in fact, of all in which it retained any considerable foothold.

Advancing toward the north from the head of the peninsula, we come next upon the territory around the fastnesses of the Alps. Here we find that some twenty or more communities had thrown off the sovereignty of the Holy Roman Empire, and half of them (or more) any connection with the Papal Church, and had set themselves up as independent states loosely confederated with one another. This development had been going on for more than two centuries before our date (1648); and the whole power of the Hapsburg emperors of the Holy Roman Empire, whose ancestral castle was near the midst of it, had not sufficed to crush it out. On the other hand, one of the results of the Thirty Years' War was the formal recognition of their independence in the Peace of Westphalia instrument. Here were, then, in law a score of petty sovereignties in a territory of some fifteen thousand square miles, split into two well-defined parts by the highest mountain range of the continent, part of it lying therefore in the geographical unity to the south of it and the larger part in that to the north of it. Here was, therefore, a most serious obstacle to the development of real national states in the geographical unities

north and south of this great mountain barrier,—one destined to retard that development from every point of view save one, namely, as furnishing a neutral meeting-ground for the statesmen of all countries in which to thrash out their controversies by the use of reason and logic instead of cannon.

The decentralization and demoralization in this district was, however, petty when compared with what meets us on advancing into the heart of the old Empire. While we find here a goodly number of considerable states assuming to be independent and sovereign,—such, for example, as Mecklenburg, Brandenburg, Brunswick, Electoral Saxony, Ducal Saxony, Bohemia, Bavaria, the Palatinate, the archduchy of Austria, the ecclesiastical states of Cologne, Mainz, and Trèves,—there were scores and scores of others, some of which were not of much greater extent than a good-sized farm, and many others were what one today would denominate as moderate-sized towns and villages. Hardly a single one of the city-states of the old Empire possessed in the middle of the seventeenth century a population of fifty thousand souls.

The shadow of the old Empire still served to bedim this picture of decay, decomposition, and rottenness. The Emperor was still there, and the Pope still exercised some authority in given localities; but the great bilateral, bicephalous institution which for more than eight centuries had mediated the relations between God and man, which had been the custodian of all truth and the source of all authority, which could give sanction to its sovereignty and law not only by the claim of being the sole interpreter and transmitter of the divine will, not only by the employment of all terrestrial punishment, but also by the possession of the keys to heaven and hell,—this great institution was now no more. In the far larger part of this district the papal authority was entirely

repudiated, while the imperial authority served for little more than to sustain princely power with the now empty formula "by the grace of God."

This realm of chaos and disorganization was bounded on the west by the French kingdom, which, as we have seen, penetrated it across the Vosges to the upper Rhine, and by the Spanish Netherlands; on the north by the now independent states of Holland and Denmark, both of which were parts of the geographic unity of middle Europe; and on the east by the kingdom of Poland,—which was but a title for a loose confederation of feudal estates lying along the northern half of this eastern boundary of the Empire, from the Baltic at Danzig to the western frontier of the kingdom of Hungary,—and after that by this frontier and the western frontier of the Turkish Empire to the Adriatic Sea.

To the far north of this dismembered Holy Roman Empire lay the kingdoms of Sweden and Norway. These two states had been in 1397 brought into political union with Denmark in the so-called Kalmar Confederation; but in the middle of the seventeenth century this union had been long severed, and the ascendancy of Sweden under the Protestant House of Vasa had made this kingdom dominant not only in the whole of the great northern peninsula but over all of what we now know as Finland and across the south arm of the Baltic itself. It had thus eaten into the kingdom of Poland, the dukedom of Prussia, and the Russian Empire itself, practically absorbing this dukedom and shutting off both Poland and Russia from their outlet to the sea.

Down to this period, the middle of the seventeenth century, Hungary had maintained at least a quasi-independence of the Holy Roman Empire, although its people and its government had accepted the Papal Church creed and organization and although the theory of the Empire would have

included them. Protestantism had even made some way here ; and Hungary, even before its juncture with the archduchy of Austria, was to be counted among the states of western Christendom. The Hapsburgs were using, naturally, their authority and power as Holy Roman Emperors to acquire the crown of Hungary for themselves as kings of, as well as emperors in, Hungary. At the moment, however, these plans had not reached complete fructification.

East from Poland and Hungary lay the great Russian Empire, which had been constructed by Teutonic leaders and upon a plan quite similar to that of Charlemagne's great structure. The Russian Czars did not recognize, indeed, the Papal Church Christianity, but considered themselves the successors of the Eastern Roman Emperors and as the chief priests of the Eastern Roman Christianity. They even set aside the Patriarch of Moscow, when his office appeared to be developing into a papacy. While, therefore, there was a separate organization of the churches of eastern and western Christendom, there was the same general creed in religion and morals and no greater difference in government than what obtained between the Roman Catholic and Protestant states of the west of Europe.

The great difficulties, from our point of view, confronting the Russian Empire sprang not so much from its differences in religion and morals from the states of western Christendom,—since, as far as the Ural Mountains and river, it must itself be reckoned with as a part of Christendom,—but from the fact that it had not reached its natural geographical frontiers on the north, the west, or the south. The states of Sweden, Poland, and Hungary and the great Ottoman Empire, which had seized the Eastern Roman Empire almost up to the very gates of Vienna, held it back on three sides, thus, from the attainment of its national destiny.

The Holy Roman Empire was in this way protected, at that date, on its eastern frontier by Christian states against the Orient and its civilization, except in the southeast, where, soon after the middle of the fifteenth century, it came into contact with the Ottoman Empire, by the advance of that empire over the Greek peninsula and up the south side of the Danube to the confines of Hungary and the archduchy of Austria. Here, at last, on European soil and in what had been European Christendom, we come, at this juncture, up against an Oriental state and civilization which was to prove the most serious menace of all to the development of real national states in Europe and therefore to the establishment of a new source of sovereignty and authority that would give a sanctity to law lost by the passing of the doctrines of the papacy and of the Holy Roman Empire.

Such, then, in brief and crude outline was the political and ecclesiastical situation in continental Europe in the middle of the seventeenth century, the date from which we proceed in following the reaches of history in the attempt to work out the development of genuine national states as the basis of a new system of sovereignty, government, and law. Here, at this date, we find hundreds of formations calling themselves independent states, from the size of a feudal estate of a thousand acres or a town of ten thousand souls to the great British or Russian empires, stretching over seas and continents with no consideration at all manifested for the indications of geography or economic unity or of ethnical or racial characteristics and aspirations. It was, indeed, a discouraging outlook and had in it only one seed of hope; but thanks to the providence, whether it be termed God or nature, which directs—in the long run, surely, if not in every detail—the civilization of man, that single seed of encouragement was one containing great promise and immense possibilities. It

was the ever-fructifying fact that throughout the entire continent of Europe—that is, the whole territory separated from the Orient by the Ural Mountains, the Ural River, the Caspian Sea, the Caucasus, the Black Sea, the Bosphorus, the Sea of Marmora, the Dardanelles, and the *Ægean* Sea—the *moral system* of human life and conduct inculcated by the Christian religion prevailed in greater or less degree. Whatever might be the distinctions in theological doctrine and ecclesiastical organization between the Greek, Roman, Anglican, Lutheran, and Calvinistic churches, they all substantially agreed regarding the great ethical fundamentals. Here then was a fair moral consensus, brought about by a thousand years of schooling, upon which to build new structures of sovereignty, government, and law to take the place of the universal system which had been originated by Charlemagne and Leo III and which had now given way everywhere to the rising power of the human reason. The practical question was, as has been pointed out before, to find the institutions to take the place of the Papal Church and the imperial state. It was no solution of the question to answer that the human reason had succeeded to the vacancy. It was necessary for that reason to have an organ or organs for pronouncing its behests, such as would command general recognition by those over whom such reason claimed to be supreme and from whom it demanded obedience. Neither was it sufficient that any body of men undefined as to number, unlimited as to domicile, and indefinite as to relations to each other should undertake to create these organs of sovereignty and government for the making, interpreting, and enforcing of the requirements of reason as law. A very brief period of experience with such reason-riot sufficed to excite the feeling, if not yet the idea, that a number of men claiming any such authority over themselves and perhaps others must stand in certain natural relations to each

other and to the territory and population over which they should undertake to exercise authority and enforce their ideas of what reason demanded as law. The sum total of such relations came very soon, as we have seen, to be designated by the term "national," and a body of men living under them to be called a "nation." With this progress in terminology we are still, however, not much nearer the goal of our striving. We must find out what those relations are that make any body of men a nation, and how that nation arrives at a consensus of opinion regarding the rationality of measures of conduct to which it requires obedience by the infliction of punishments for disobedience, before we can claim to have found the new answer to the great question of wherein consists the sanctity of law, its compelling power over the intellect, conscience, and will of man, made necessary by the wearing-out of the political and juristic doctrines of the papacy and the imperium. Finally, the answer we seek must not be simply a philosophic theory advanced by this author or that, but the reply which the history of European civilization from the middle of the seventeenth century to the present moment has to offer. If there be anything upon which we can rely in this great search for the truth, it is certainly this. Still, something of the personal element may be involved in the author's interpretation of that history; but the elimination of prejudice will have been carried as far as compatible with the imperfections of individual activity.

CHAPTER IX

NATIONAL EVOLUTION ON THE EUROPEAN CONTINENT FROM 1648 TO 1789

It will be understood, of course, that we are attempting to trace in this chapter the evolution of only one element in the building of the European nations, namely, the geographical. As has been said several times before, this is by far the most important element, not only in itself but in its tendency to draw in its train one or more of the other elements necessary to the accomplishment of this great work. What we are endeavoring to find is whether, within this period, political boundaries were brought into any nearer coincidence with those of physical geography than what obtained at the beginning of it, as described in the last chapter.

The first change of this nature of any importance worth notice was effected in the arrangement between Spain and France called the Peace of the Pyrenees, of the year 1659. In this treaty King Philip IV of Spain gave his daughter Maria Theresa in marriage to Louis XIV of France, and with her, as a dowry, a goodly slice of the Spanish Netherlands, which—together with the city and enclave of Dunkirk, purchased about the same time from Charles II of England—moved the northeast boundary of France very nearly up to its natural frontier in that quarter. Philip, however, held to this promised gift during his own lifetime, which continued for six years after the treaty was signed; and his successor on the Spanish throne did not exhibit any greater spirit of promptness in regard to the matter. King Louis made up his

mind to suffer no more trifling in the execution of the provisions of the peace, and shortly after Philip's death occupied with a strong military force the districts of the Spanish Netherlands, promised him with the hand of his queen six years before. While engaged in this campaign he judged that the time was opportune and the conditions were ripe for him to occupy Burgundy or Franche-Comté and put his frontier on the southeast up to the Jura, the geographical boundary. Also, while marching into the Netherlands, he traversed and took possession of the entire dukedom of Lorraine. His suspected purpose to seize Holland also as a part of the Netherlands brought so many other powers into the conflict that the war took on the dimensions of a European struggle. William III, Prince of Orange, took upon himself the responsibility for the defense of the eastern provinces of the Netherlands, which had already declared independence of Spain. The Great Elector, Frederick William of Brandenburg, and the Emperor Leopold I allied themselves with him, while the Swedish king joined France and invaded the Prussian possessions of the Great Elector. The Swedish forces were thoroughly beaten in the decisive battle of Fehrbellin (1675) and driven out of these districts. This great victory and the withdrawal of Charles II of England from the alliance with Louis prompted him to sue for peace. The treaty is termed the Peace of Nimwegen of 1678-1679. According to its provisions Louis evacuated Holland and gave up his design of drawing this country into the French kingdom. His hold on Burgundy was acknowledged, and in addition thereto on Besançon, a number of towns in Alsace which had to this time stood out against him, and Freiburg im Breisgau. The Swedes were allowed to maintain possession of some territory south of the Baltic still, and also of Finland.

The eastern boundary of the French kingdom had been

thus advanced to correspond substantially with the line of physical geography, except that in the inclusion of the district of Alsace, east of the Vosges mountains, it went beyond its natural limits and created here a bone of contention for centuries following. Roughly speaking, however, we may say that the Treaty of Nimwegen brought the political frontier of France on the east into fair coincidence with the lines of its physical geography, and, taken with what had been fixed before this in the south, west, and north, completed here upon the European continent its first real national state of the modern era in so far as geographical unity was concerned.

King Louis, encouraged by these successes, was moved to go further. Down to the date of the conclusion of the Peace of Nimwegen he had not been able to occupy the city of Strasbourg, in Alsace. Two years later, however, in a period of general peace, he marched a division of his troops into the place, annexed it to the French kingdom, drove the Protestant clergy out of the famous cathedral there, and reëstablished the Roman Catholic culture in the same. With this the whole of Alsace became a French department, thus rendering still more acute the issue between the Holy Roman Empire, and its successors to which this district naturally belonged, and the state of France. At that moment, however, 1681, the Emperor of the Holy Roman Empire, Leopold I, confirmed these aggressions in an instrument called the Truce of Regensburg.

Under the influence of the astute and persuasive bishop of Meaux, Bossuet, Louis undertook to nationalize the Church in France by expelling and excluding the jurisdiction of the Pope and all international ecclesiastical organs, as being foreign interference with national sovereignty. In 1682 the four noted propositions were given out as royal commands—probably instigated and formulated by Bossuet—which made the king substantially the Pope in France and reorganized

the Roman Papal Church in France as a national Gallican Church very nearly resembling the Anglican Church. The movement proved so unpopular, however, that the king felt compelled to retreat from his effort to set up ecclesiastical as well as political nationalism, and to recognize anew the Church internationalism of Rome and the universal authority of the Pope. In order to restore himself to favor with the Pope and the curia he now gave himself to excesses against the Protestants, which greatly injured France and robbed the kingdom of the very element and class in its population which would have been the most efficient in the development of a national consciousness of truth, right, and policy. In the year 1685 he revoked the Edict of Nantes, the charter of Protestant liberties, and soon after introduced against the Huguenots the much-hated custom of billeting soldiers on them,—the so-called *dragonnade*. These measures drove some quarter of a million or more of the most capable and promising personalities in the population of France out of the kingdom. The most of them went to Prussia and helped mightily to build up the city of Berlin, and did the chief part in creating national animosity between Prussia and France and in giving to Prussia the very best that there was in French civilization at the cost of France herself.

But deeper down and more fundamental than all these things from the point of view of our analysis is the consideration that the return of France to the doctrine of the papal system regarding the origin of truth and authority over men, and the method of their transmission to men, made it impossible for the French population to develop a national consciousness as the source of the new civilization in politics and law; that is, made it necessary that the French population should throw off the state organization which was holding them down under this old philosophy, in order that they might plant

themselves upon the new basis on which the modern order should be built up, the modern system of sovereignty realized and the new sanctity of law attained. In a single sentence, it made inevitable the Revolution of a century later, unless the existing system would peaceably yield to such modifications as would forestall this necessity.

During this same period the Hapsburgs, from their vantage ground of hereditary rulers of the archduchy of Austria and the kingdom of Bohemia, and of Emperors of the Holy Roman Empire by a succession of elections, were developing upon the southeastern border of the Empire a new empire—in the middle and lower valleys of the Danube—of their own. In the latter half of the seventeenth century the Osmanli advanced into southern Hungary, and the Emperor Leopold I marched his army into this kingdom to meet them. Once in possession of this rich territory he was resolved not to give it up again. By the help of Sobieski, king of Poland, the Emperor succeeded in driving the Osmanli out of Hungary and across the Danube, except in the district east of the Carpathians and between this barrier and the Black Sea. The Hungarians received the imperial aid most thankfully, and in appreciation of it conferred, in the year 1687, the crown of Hungary upon him as the hereditary right of his family. Here, now, was the nucleus for the new Hapsburg state. Its natural boundaries were the Carpathians on the northwest, north, and northeast, the Black Sea from the mouth of the Danube to the point where the Balkan Mountains most nearly approach that body of water on the southeast, the Balkans on the south, and the Adriatic Sea from the point where this same range approaches it to the head of the Gulf of Venice and then along the crest of the Julian and Noric Alps to the Carpathians on the southwest and west. It was the valley of the lower Danube, from a few miles below Vienna to the

Black Sea. Here was a natural geographical and a natural economic unity,—a unity naturally calculated to furnish the basis for a national state. But when the Austro-Hungarian Empire began really to emerge from the Holy Roman Empire of the German Nation, in the latter half of the seventeenth century, it not only occupied a large territory northwest and west of these natural physical and economic boundaries, but it failed to cover more than half of that within them. At that moment the Ottoman, or Turkish, Empire held all of it on the south side of the line of the Save and the Danube from the Adriatic Sea practically to the Black Sea, and in addition thereto the district on the north side of the lower Danube, reaching inward to the Carpathian Mountains, known now as the kingdom of Rumania but then named the provinces of Wallachia and Moldavia.

In order, now, to become a truly national state from the points of view of geographical and economic unity, the problem of the Austro-Hungarian monarchy was to move its center of gravity from Vienna to Budapest and exchange its territory lying northwest and west of its natural geographical boundary (as above described) for the Turkish territory on the south of the Save and the Danube—and, of course, whatever of the same lay north of these rivers—as far as the Balkan Mountains as the natural frontier on the south of this valley of the lower Danube. This was the fatal question not only of Austro-Hungarian politics but (as will be seen later) of European politics, the failure to solve which correctly has done more than anything else—we might almost say than everything else—to prevent the development of genuine national states in middle and eastern Europe as the necessary basis for the new legitimacy, and therefore sanctity, of law.

The next forward step in the development of the national states of Europe was taken in what is termed the War of the

Spanish Succession. Briefly its issues were as follows: In the year 1700 King Charles II of Spain passed away, leaving no direct heirs of his body. He left a will, however, conferring the crown of Spain upon Philip, duke of Anjou, grandson of Louis XIV. There existed treaties between France, Austria, and Spain in which there was provision made against any future union of Spain and France or Spain and Austria, and with the accession of Philip of Anjou to the throne of Spain it was quite possible that this provision would be violated. What, now, should be done?

Louis XIV undertook promptly to carry out the provision of the will at the expense of the treaties. In this he was clearly in the wrong, and the other states prepared themselves to uphold the treaties. This was what is known in European history as the War of the Spanish Succession. It lasted long and was generally indecisive. It terminated in the treaties of Utrecht and of Rastadt (in Baden), in the year 1713. The readjustments of the frontiers of the European states were, in part, favorable to the further development of national states, in part not. Philip of Anjou was allowed to take the throne of Spain, and thus a possibility created of the union of France and Spain. Great Britain was allowed to keep Gibraltar and Minorca. The elector of Brandenburg was permitted to throw off all feudal relations to the king of Poland for the dukedom of Prussia and to unite all his possessions and territories with Prussia, as the king of Prussia. This step was a great advance, as will be seen later, in creating a national state in middle Europe.

The House of Savoy received the island of Sicily. This was also destined to prove a move in advance toward the nationalization of Italy. Seven years later Sicily was exchanged for Sardinia, and with it came to the House of Savoy the royal title. Here was the national house around which the national

state of Italy was destined to be built. The Austro-Hungarian state was allowed to take the Spanish Netherlands, Milan, Naples, and Sardinia, which latter it exchanged, as has been stated, for the island of Sicily. This inaugurated the struggle between the Italians and the Austrians and Spaniards for the possession of the Italian peninsula,—a struggle which even now is not entirely finished.

During this same general period the movements in the north of Europe resulting in the great Northern War and the Treaty of Nystad brought about a more satisfactory result from the point of view of the nationalization of Europe. The king of Denmark levied war upon the duke of Holstein,—Gottorp, whose sister was the wife of Charles XII, king of Sweden. The king at once entered the lists as the protector of his ducal brother-in-law. Great Britain made common cause with Sweden, and Denmark was quickly brought to terms. With this, King Charles turned his forces against Russia, and for a time successfully; but at last he was beaten and thoroughly routed in the decisive battle of Poltava, in 1709. The war dragged on, however, until after the death of King Charles, when the exhausted belligerents formed the Treaty of Nystad, wherein the whole south shore, practically, of the Baltic Sea and the Gulf of Finland was awarded to Russia; and the Czar, Peter the Great, now moved his capital to the city built by himself at the head of the Gulf of Finland, St. Petersburg. Bremen and Verden were given to Hanover. Prussia received the larger part of Pomerania. Russia made thus a considerable advance in the fixing of her northern frontier, and the state which was to nationalize Germany was steadily moving onward, gathering the fragments on all sides and binding them into compact unity.

At this date also the Czar took another step in working out the nationalization of Russia. He abolished the office of

patriarch of the Russian Church and became himself the president of the Holy Synod. He thus forestalled the formation of anything on the order of a papacy in the Russian Church and freed himself from such struggles as paralyzed the efforts of the German Roman-emperors.

For nearly twenty years after the Treaty of Nystad, Europe enjoyed a period of comparative peace, while the relations established by this treaty and those just preceding it were being adjusted. One great question, however, had been menacing that peace for the latter half of this period. The Hapsburg family, fearing the failure of male heirs, had extracted from the principal states of Europe an approval of a document issued by that family and known in European history as the Pragmatic Sanction. It provided for the succession to the Hapsburg properties and powers, intact and undivided, of females in default of males. This change in the law of succession of the Hapsburg House came to the practical test in the year 1740, when the Duke-King-Emperor Charles VI passed away without male heirs and was succeeded in such of these offices as were hereditary by his daughter, Maria Theresa. This was in accord with the Pragmatic Sanction; but the elector of Bavaria claimed to be the lawful heir of all the Hapsburg properties and powers, and candidate for the imperial office, and was supported in his claim by Louis XV of France. Frederick the Great advanced a claim to Silesia, and by the victory over the Austrians at Mollwitz, in 1741, held at least the most of it. The armies of France and Bavaria overran the archduchy of Austria and secured the election of the Bavarian prince as German Roman-Emperor.

The Hungarians now came to the rescue of their queen, drove the French and Bavarians out of Austria, and captured Munich. The war had now become general over Europe, and lasted to 1748 and was terminated by the Treaty of Aix-

la-Chapelle, which confirmed the Pragmatic Sanction, gave Silesia to Prussia, and provided for the choice of Francis, the husband of Maria Theresa, as Emperor of the Holy Roman Empire. The new Austro-Hungarian Empire was considerably solidified by these changes, and Prussia reached her natural boundary on the southeast, in part.

It was now the middle of the eighteenth century, and history seems to have become impatient with the slow movements of the European states in developing their national form. Some great force appears to have stirred them and the people behind them to more vigorous action. Three great movements followed more rapidly upon each other during the last half of the century.

The first was the great effort of Prussia to hold her own against Russia and Austria-Hungary. The former wanted the Prussian territory on the Baltic, and the latter was bent on retaking Silesia. They entered into an alliance against the great Hohenzollern, which was quickly strengthened by the accession of France and Saxony. On the other hand, Great Britain, which was now conscious of its enmity to France in the colonial question, ranged itself on the side of Prussia. The struggle continued for seven years on both sides of the Atlantic in what is called the Seven Years' War, and ended in the triumph of Britain and Prussia, as sealed by the treaties of Paris and Hubertsburg, of the year 1763. They made Great Britain the great colonial power in North America, and confirmed Prussia in the possession of her Baltic lands and of Silesia, and brought the Hohenzollern state forward into the rank of the first powers of Europe. Frederick only promised to vote, as the elector of Brandenburg, for Joseph, son of Maria Theresa, for successor to his father as German Roman-Emperor. At last, with this war and these settlements, the Protestant Teutonic powers of Great Britain, Sweden, and Prussia were

in the lead; and the work of creating a national consciousness of truth and right, and substituting it for divine revelation through Pope and Emperor, might be expected to advance more surely and rapidly.

Covered with the ruins and débris of the old system, however, Europe was hardly the best stage upon which to make the first test of the new doctrine, and of the new system to be constructed on it. Across the Atlantic, and separated by this broad sea from the interests and feuds of Europe, had now grown up, in the latter part of the eighteenth century, a number of hardy communities, of Teutonic stock chiefly, which had practiced local self-government from the very beginning of their existence, and which now set about first confederating themselves and then drawing themselves into the bonds of a more perfect union,—in other words, forming a nation upon that portion of the North American continent which was roughly bounded east and west by the Atlantic Ocean and the Allegheny Mountains, between the parallels of north latitude thirty and forty-five, and inhabited chiefly by Anglo-Saxons, Dutch, Germans, and Celts. In the twenty-five years between 1765 and 1790 this population moved forward vigorously and continuously toward the formation of a nation and a national sovereignty within this territory, and the expulsion of the sovereignty of the "king by the grace of God." Its method of procedure was for the communities in town meetings to discuss the issues and send representatives to the different colonial assemblies, thus prepared to deliver the views of their constituents, and for these assemblies to send delegates to a general congress, prepared in the same way to convey the ideas of those for whom they stood. Thus was assembled, step by step, the Stamp Tax Congress of 1765, the First Continental Congress of 1774, the Second Continental Congress of 1775, and the Convention of 1787, through which events

the United States of America threw off all subjection to the old system of Europe in any of its forms and became a sovereign nation, with its law and polity based upon the new philosophy both as to the source of truth and authority and the sanctity of law.

The national consciousness was held to be the ultimate interpreter of all truth, which was to take the force and form of command. The nation was the people living within certain territorial bounds marked by nature as a physical and an economic unity, and the undoubted majority of the male adult population was authorized to speak for and obligate the whole population and every individual member of it. If the clergy met them with their doctrine of the divine source of truth and authority and its revelation to man through any divinely appointed organ, they answered that the nation was that organ, and that it made no practical difference whether its act was an original creation or an interpretation of the meaning and intent of something already existing; that the practical question was to organize the nation so that it could speak its sovereign word in so unmistakable a manner and in so pronounced a tone as to carry quite general conviction and compel universal obedience. For a hundred and fifty years the electrons of the nation, the individual families, had been getting together into the atoms, the communities of every kind; the atoms into the molecules, the States; and the States into the sovereign substance, the nation,—thus following at every step the course marked out by nature for the creation of anything. And now this substance stood out in all of its perfection of matter and form in the Federal conventions; the Constitution of the forever-united States; the Federal government, with its defined and limited powers; the Bill of Rights; the constitutions of the States; the governments of the States, with their general powers, not denied to them nor

vested elsewhere; and, to cap the whole structure, with the national judiciary, which was permanent in tenure and unpolitical in nature, vested with the power of interpreting the meaning of every word of the Constitution of the United States and of testing the correspondence with it of every act of authority exercised, or attempted to be exercised, by anybody over anybody in the nation, and back of whose interpretation lay only the nation in its organized capacity for amending the Constitution of the United States in the direction of more government or greater individual liberty, as it might deem required by the onward march of civilization.

It is no wonder that Europe stood still and stared in astonishment at this new creation emerging out of the chaos of revolution, and that revolution won a new meaning in the philosophic reflections of the latter decades of the eighteenth century. It is no wonder that in the older civilizations of Europe, with some of the qualities of national union more perfected than in this comparatively new land, champions should have arisen for a like movement. It is to be remarked and regretted, however, that these champions did not follow the course of nature pursued in the development of the North American national sovereignty and in the creation of government and liberty in the United States of America. The schools of the family, the community, the congregation, and the commonwealths played no such part in the preparation of any European population for the attainment and expression of a national consciousness of truth and right. That consensus started at the top and reached outward, instead of first ensoul-ing the atoms and preparing these for further combinations.

CHAPTER X

THE TOTAL BOULEVERSEMENT OF THE POLITICAL AND JURISTIC PHILOSOPHY OF THE MIDDLE AGES BY THE RATIONALISM OF THE FRENCH REVOLUTION

France, as we have seen, was one of the first countries to break off from the system of the Carolingian Empire and set up an independent sovereignty within geographical limits very nearly corresponding with a natural geographical unity, which was also largely an economic unity. Quite spontaneously the student of European history would look to her as leader in the evolution of the system of national states upon the Continent. But there were a number of difficulties in the way of Bourbon France becoming a national sovereignty with a code of law deriving its sanctity from the general conviction that it expressed the French national consciousness of truth, right, and justice. Among these were the facts that the French frontiers in Europe reached already in places beyond France's natural geographical limits; that France had been, during very many years before 1789, a colonial empire of very great extent; that she was deeply in debt and practically bankrupt; that her agriculture was held back by feudalism, and her commerce and manufacture by monopoly; that her representative bodies had ceased for more than a century and a half to function. But more than all this, the reformation of the Gallican Church, which had promised to bring a much larger freedom of opinion and its expression regarding the fundamentals of philosophy and science as well as faith, had not materialized; actual persecution had taken its place and had driven at least

fifty thousand of the most capable families of the kingdom into foreign lands; and the royal authority and power seemed to regard itself as emanating from a divine source, and as the organ for the revelation of the divine will to man in so far as that will should determine through sanction the rules of conduct which he must observe and obey,—the old system of the Holy Roman Empire with the Bourbon king occupying the place of the Emperor.

From all of these considerations it became increasingly clear that in order for France to realize the principle of the new state system, the Bourbon organization must be set aside and a new organization for the interpretation and execution of the national consciousness and the national will effected. In a single sentence, France had reached the threshold of revolution.

The immediate occasion of the great upheaval was the state of the finances. The young king, Louis XVI, full of the enthusiasm of early life for doing something noteworthy, called the great economist and financier Turgot to his side. His propositions for increasing the revenue and reducing the expenses were all sound enough, but they transferred too large a share of the burden from the common man to the privileged few. These latter, however, were mostly in evidence around the monarch and the government. They frightened the king out of the purpose of following the advice of Turgot and induced him to dismiss the great reformer.

The king tried again with the Geneva banker Necker as his financial minister. Necker's plans were less thoroughgoing, and some little alleviation was felt. He was able to hold on for five years, while Turgot gave it up in less than three. At length, however, he also was obliged to confess to the king that the Turgot program was the only thing which would bring any real and permanent relief. The king let him

go, also, and appointed Calonne in his stead. Calonne, however, simply restored the old system in so pronounced and aggravated a form as to make out of it a perfectly patent abuse.

Under this grave pressure the king resolved to get a fuller and broader view of the whole situation. He called together in 1787 a considerable number of the most capable intellects in France—of his own selection, however—and asked them to study the situation and give him their advice. They quite naturally followed in the footsteps of Turgot. But the nobility and clergy again refused to have these changes introduced.

The king now recalled Necker and resolved to give him the backing of a more representative body. There had existed in France during the Middle Ages, as elsewhere, an organization called the Estates-General, *Etats-Généraux*, *Generalstaaten*. It consisted of three bodies,—the nobles, the clergy, and the third estate, the last being the representatives of all except nobles and clergy. Any measure must pass all three bodies and have thereto the approval of the Emperor or king in order to become law. There is no need to dwell upon the clumsiness of this procedure or the difficulty of effecting anything through it. It had not met in France since about 1614. It was, however, the only thing having any historical background and support to which the king could appeal. He issued his call for them to meet May 5, 1789. In the summons he fixed the number to represent the nobles at three hundred, the clergy at three hundred, and the third estate (or all the rest) at six hundred. This was a suggestive thing, an ominous thing, for him to do. Did it mean that the third estate was to have the weight of the other two in all measures upon which action was invited?

The answer came quickly and decisively. The six hundred representatives of this estate assembled and organized them-

selves separately, declared themselves—at the suggestion of a member of the clergy who had taken his seat with them, the famous Abbé Sieyès—to be the National Assembly, the representatives of the sovereign nation, the new sovereign state. The king, the high nobility, and the upper clergy were dismayed by this bold claim. The king yielded so far as to order the nobles and clergy to give up their special organization and unite with the representatives of the third estate; but when it came to recognizing the body as the national, sovereign state of France,—the organization which was now to take the place of Pope, Emperor, or king in transmitting the will of God to man for regulating his conduct and in giving sanctity to the law he should obey,—the king faltered and essayed to dissolve the Assembly, while many of the nobles and clergy fled the country. Some of the most powerful and influential among them, however, such as the duke of Orleans himself and the wily Talleyrand, bishop of Autun, and Gregory of Blois, went over to the third estate; and the king gave up attempting to exercise any control over their movements. The nobles and clergy remaining were now members of the one body with the representatives of the third estate; and the National Assembly became now undisputedly the sovereign power in France. The great transition from the medieval to the modern philosophy of law and politics—from the universal world state, with law as a divine emanation through Pope, Emperor, king, or prince, to the national state, with the national consciousness of truth and right as the basis of all law and order, and the national will as the compelling power in securing obedience thereto—had now been effected in this one substantially natural physical and economic unity of the European continent.

The great problem now was to keep the National Assembly truly representative of the nation both in quality and in rel-

ativity of parts, and secure prompt and universal obedience to its decrees,—a problem whose immediate seriousness revealed itself in the suspicious behavior of the king's body-guard. To meet the threatened danger thus manifested, the guard was dismissed, and German and Swiss hirelings were substituted for it. This was the chief occasion of the first mob outburst in Paris. It materialized in an attack by the inhabitants of the slums of the city, largely women, on the Bastille, the old political prison. It was seized and destroyed, and the heads of the governor and several of the garrison were severed from their bodies and carried on the points of spears through the streets of the city. The immediate results of such violence were the organization of a national guard by Lafayette within the city under his command; the election of the president of the National Assembly as mayor of the city; the appearance of the king at the Hôtel de Ville with the new colors of France, the tricolor of the Revolution; and most important of all, from the point of view of this study, the formation of the new constitution of France by the National Assembly. It is to this latter procedure that we would give our chief attention.

The fact that the National Assembly assumed the authority to make the new constitution was only the practical way of asserting its sovereignty. It did not claim simply the power of initiating constitutional or other legislation. Its enactments were not subject to approval or veto by any other body, power, or authority. It had now taken the place of and absorbed into itself every element of sovereignty which had heretofore existed within the frontiers held by it to be the boundaries of France. Its answer to the great question of the seventeenth and eighteenth centuries was unmistakable and complete. The national consciousness of truth and right, interpreted by the national assembly of representatives of the

whole people organized as one body without regard to orders, castes, or classes, was now the source in France of the sanctity of all authority and law. From this sublime and indisputable position it proceeded to frame and enact the fundamental law of the state, the constitution.

On motion of the Marquis de Lafayette, who had passed through the schooling of the American Revolution, the Assembly took up first the enactment of a Declaration of Rights, the establishment of the sphere of individual liberty against all governmental power. At one fell blow all the feudal rights and privileges of the nobility over the peasantry of the nation, all the tithes heretofore due to the clergy, were swept away, the sale of offices and titles was abolished, the equality in taxation was established, freedom of religious opinion and of the press declared, and every citizen was made eligible to every office, civil or military.

The National Assembly then addressed itself to the work of creating the new government. This it made to consist of a legislature of a single chamber, the members of which should be elected by a broad manhood suffrage. Upon this body the Assembly conferred all governmental power, to be exercised either immediately or by organs created by it for the purpose. The king was left upon the throne, but with no right to initiate legislation, and with only a suspensive veto, for a stated short period, over the measures enacted by the legislature; and the consent of this legislative body was made necessary to the validity of treaties, the declaration of war, and the conclusion of peace. The Assembly also decreed a new Church organization, which subordinated the Church to the government, confiscated the Church property, and compensated the clergy by salaries out of the treasury of the state, like civil officials. The judicial authority of the old parliaments was terminated, and their functions transferred

to courts to be created by the new legislature and subject to its control, both in tenure and function.

It will thus be easily understood by any American lawyer that the individual liberty so ostentatiously paraded in this instrument was a mere hoax, as well as the proclaimed division of power. The government was simply the one-chamber legislature, which determined its own powers, and created the organs for their execution, and changed and abolished the same at its own pleasure. It took but a little time for all this to become abundantly manifest.

The Assembly had provided no way of declaring this constitution in force save by royal proclamation; and the king, very naturally, was a little reluctant to take this very serious step. This delay on his part, and one or two other things, which would hardly have been noticed under different circumstances, but which were capable of bearing an unfavorable interpretation, furnished the occasion of the Paris mob of October 5, 1789, which marched to Versailles, raided the Assembly and the palace, and forced the royal family and the Assembly to go to Paris, where they would be under the constant control of the mob.

The future course of the Revolution, so long as unchecked by outside power, was now fixed and inevitable. The king, the Church, and the nobility were now the débris of the ancient system. While manifesting no life they might be endured, but even that only momentarily. Gallic logic would sweep them entirely away so soon as convinced that they could not be transformed by the modern principle of national democracy. The clergy, to the number of about two thirds of the whole, refused to take the oath on the constitution formed by the National Assembly and accept the status of civil officials; the larger part of the nobility emigrated from the country and gathered in towns and cities of the Holy Roman Empire

near the eastern frontier of the French kingdom; and the king, when called upon to execute the law against the "refractory priests" and the "traitorous nobles," was so injured in his sense of truth and justice that he preferred flight. He sought the army stationed at Montmédy, but was captured with his family and retinue and brought back to Paris. This all occurred in the late summer and early autumn of 1791.

The tottering royalty was for the moment upheld by Lafayette and the national guards. The National Assembly now finished the work of clearing away hereditary nobility, independent priesthood, and independent judiciary, and forced the king to take his oath to observe and execute this revised constitution, as the condition of his restoration to the throne. It now dissolved and gave place to the Legislative Assembly, which it had created as the new government.

This revised constitution still contained, however, the provision which vested in the king the suspensive veto over the measures of the legislature. This power he now exercised against its acts making the refusal of the "refractory clergy" to take their oaths upon the constitution creating them civil officials a crime punishable by imprisonment, and condemning the continued absence of the emigrant nobles from the country as treason.

These same acts of the French legislature had very great influence in arousing the other states of Europe to take a stand against the dangerous propaganda now issuing from the Western revolution. August 27, 1791, the Emperor of the Holy Roman Empire, Leopold II, and the King of Prussia, Frederick William II, issued a call, known in European diplomatic history as the Declaration of Pillnitz, directed to all the other European powers to join with them in assisting the king of France to establish an efficient government. Nothing could have been more fatal. It brought the radicals to the

front in the French legislature, and they forced the king to propose war against the Emperor. Even this, however, did not save him. The National Assembly, or Convention, the sovereign power in the new France, was immediately reconvened and reorganized, consisting almost entirely of radicals. It abolished the royal executive and declared France a republic in every detail, and finally condemned Louis to death.

Thus, in the beginning of the year 1793, the French Revolution had given its complete answer to the great question as to what was to take the place of the imperial-papal system in the creation of the new order and in giving to the law thereby established its sanctity; namely, the national consciousness of truth and right, and the national will based on that consciousness and expressed by a national assembly of deputies of the whole people resident within the national territory, according to the rule of personal equality in representative distribution. It was the enthronement of the human reason in national organization, in the place of divine revelation through Pope, Emperor, kings, and princes.

It remains now to be seen how and how far the Revolution realized this vast change in the philosophy of Europe's civilization. The enemies with which it had to contend were legion, both within and without. There was, first, the Papal Church, with the control in its hands not only of religious opinion and ecclesiastical affairs in France but of secular education as well. As we have seen, the Reformation had not made the same headway in France as in Great Britain, Scandinavia, and the Holy Roman Empire,—had not prepared the way for the advent of the human reason as the new organ for the interpretation of truth and the basis of law. To break this bond, therefore, the Revolution was compelled to do the work of the Reformation at the same time with its own proper work. The inevitable result was such powerful exertion as

made its movements take on the forms of monstrous violence, repellent and terrifying. Then the entire nobility, with few exceptions, not only manifested their opposition in debate and propaganda, but had emigrated into foreign countries, especially into the Holy Roman Empire, and were seeking foreign aid with which to curb the Revolution. And, finally, the foreign powers had at last become aroused to the gravity of the crisis and were marching their armies toward the French frontier. At first they were beaten (at Valmy and Jamappes, in the autumn of 1792); but the French movements, as the results of these victories, in the annexation of Nice, Savoy, and the Austrian Netherlands, the execution of the king, and the call of the National Convention upon the peoples of foreign states to throw off their existing governments and offering them military aid in so doing, put the determination into the will of the foreign powers to down this "red peril" of the West before it could deluge their own homes in its blood. Great Britain as well as Spain now joined with Austria and Prussia; and the momentary success of the coalition brought on the consolidation of the whole power of France, first in the hands of the Jacobin triumvirate and then, finally, in those of Napoleon Bonaparte. This vast change was accomplished during the last five years of the century and at the beginning of the new century. The army, under the commandship-in-chief of Bonaparte, was not only the government, but virtually the state,—the sovereignty; and the sanctity of the law rested upon the power to execute it. The feeling that he must be obeyed who could enforce obedience by physical power was again the compelling influence over the consciences of men. After the experiences of the years between 1789 and 1795, however, this could not be a satisfactory solution of the great problem in the minds of the French nation. The answer of 1793 had demanded legitimacy of source and ra-

tionality of content as necessary elements in giving law its sanction,—philosophically, at least, more necessary than capability of enforcement. The prime purpose to be accomplished after 1800, however, was to prevent the complete extermination of the new philosophy of civilization in France and to carry it as propaganda into the rest of continental Europe. It was felt by both conservatives and radicals that this could be best done by Bonaparte, at the head of the army invading other countries and stirring up their subject classes to revolt against the rule of the existing governments. Bonaparte himself, however, was profoundly conscious of the necessity for a background of legitimacy and an ideal support for his Fascism. He therefore began to approach the Pope, Pius VII, for an understanding; and in the Concordat of 1803 the sway of the papal theory over the Church of France was gradually restored, the political effect of which was realized when, on the second day of December, 1804, the Pope crowned him Emperor. The place and manner of this highly important act were most significant. Bonaparte did not go to Rome. He made the Pope come to Paris and conduct this impressive ceremony in the great cathedral of Notre Dame; and when the Pope was on the point of placing the crown upon his head, Bonaparte snatched the great symbol from the hands of His Holiness and crowned himself. It was doubtless his idea in all this to forestall any contest with the Pope over the question as to whether the Emperor or the Pope was the prime organ of the divine revelation of truth and law for the conduct and government of man, such as had shaken for centuries and finally disrupted the Holy Roman Empire of the German Nation. There is also no question that the Pope and his cardinals so understood it and felt the blasphemy of the deed, as they regarded it, to the very quick. It was no period, however, for them to manifest their

abhorrence. They must bide their time, and for the moment allow the new emperor to have the setting of the Carolingian system for the legitimacy of his work.

Bonaparte was wise enough, also, not to depend entirely upon this revival of the doctrine of divine revelation as the source of his authority. He knew that this doctrine had been too thoroughly riddled and honeycombed by the Renaissance, the Reformation, and the Revolution ever again to serve alone as a permanent foundation for sovereignty over man. He understood that political and juristic civilization had reached the point where, in addition to legitimacy of source and capability of execution, law must also find its sanctity in the rationality of its content. He gathered about himself the very best talent of France in all departments of knowledge and enterprise. He even called geniuses of other lands to serve him. With such helpers he reorganized both the civil and the military administration and built up the university system of education and the system of public works. He paid special regard to the reform of the judicial system and to the authorship of the great code which bears his name and which is still the basis of a large part of the law of Europe. He sought in every direction to bring all things accomplished or undertaken into accord with the most enlightened opinion and to gain the approval of universal reason for all of his work.

During the first five years following his coronation as Emperor his success was astoundingly great. Politically he seemed in 1809 to be on the point of bringing the whole of the continent of Europe from Madrid to Warsaw under his sway. Not since the reign of Charles the Great had there been anything approaching it in the Christian world. The union of the Continent in government and civilization appeared to be near at hand. The sanctity of law had the

support of legitimacy in source, rationality in content, and certainty, promptness, and impartiality in execution.

What was now lacking, if anything, to prevent the Napoleonic system from being or becoming permanent and productive of peace, prosperity, and contentment? The answer to this comprehensive question is not very difficult of discovery to the student of world development. There were three great forces, any one of which was sufficient to occupy the whole time and activity of the imperial government, but which, when operating during the same period and over the same districts, were simply insurmountable.

They were, first, the relation of the great Continental empire to Great Britain, which then as now—then even more pronouncedly than now—claimed the “sovereignty of the seas,” a claim which Bonaparte in the height of his power could not brook. He had no navy to compete with that of Britain, and no merchant marine; but he conceived that by closing all of the ports of the Continent in his possession he could kill British trade and thus destroy Britain’s maritime supremacy. He instituted what is known, in the European history of the early years of the nineteenth century, as the Continental System, the exclusion of British trade from the Continent. This had as its prime and permanent effect the deadly hostility of Great Britain, which was thereafter to become the heart and core of every coalition against Bonaparte. The Emperor found it very difficult to execute these decrees against British trade in such ports as Lisbon and Antwerp and Hamburg and Copenhagen, since they were soon felt to cut both ways; and when he came to requiring of the Pope the closing of the ports of the States of the Church and his adherence to the Continental System, His Imperial Majesty met with a flat and persistent refusal. This irritated Bonaparte to such a point that he proclaimed the secular rule

of the Pope over these states as abolished and the states as annexed to his Empire. This bold deed was countered by the Pope's bull of excommunication, which the Emperor answered by ordering the Holy Father's arrest and transportation into France.

These events of the spring of 1809 were fatal mistakes on the part of Bonaparte and led to the loss of the great spiritual foundation for his authority as the organ of divinity for the revelation of truth and law to man. From this moment forward, the Papal Church, with all of its vast educational influence over the mind and character of men, became his implacable enemy. The momentary understanding between Bonaparte and Pius, attained through the Concordat of 1803, had, as we have seen, been rudely shaken by the former's arrogant treatment of the Holy Father at the ceremony of the imperial coronation in the last days of 1804, and the mutterings of dissatisfaction had been audible, more or less plainly, during the period between 1804 and 1809; but it is hardly credible that anybody, churchman or layman, was prepared for the savage deeds of May, 1809. They simply robbed his authority both of its divine source and its rationality in employment, and rested the sanctity of his law simply upon his power to enforce it. But it was too late for that in the history of European development, and after the great crisis of 1809 his downfall was certain and evident to the competent observer of the play of the forces of civilization.

Lastly, he now came in his undertaking against Russia squarely up against the great organizing force of the future, namely, nationalism. Already, in the beginning of the year 1811, it had appeared in his rear. Sir Arthur Wellesley, later Duke of Wellington, had with a British force effected a lodgment in Portugal, and seized and fortified the place known as Torres Vedras and succeeded in holding it against every

attempt of the French to drive him out. On the other hand, he, from this point as a base and a support, gradually drove the French forces back through the Pyrenees and invaded southern France. The Spanish territory within its natural geographical limits was freed from the presence and dominance of the foreigner and was now enabled to pursue its course of national development. Bonaparte seemed to regard this great event, or series of events, with little concern. He appeared to have no eyes for anything except the march to Moscow. He went straight ahead, his men dropping in thousands by the way; and when he reached Moscow he found charred ruins, instead of houses, to protect his soldiers from the blasting cold. From the moment he began retreat he was vanquished, but the October days of 1813 at Leipzig broke his power and reputation completely and worked his banishment to Elba. By the Peace of Paris, May 30, 1814, France was reduced to its boundaries of 1790, and the Bourbon prince, in the person of Louis XVIII, restored to its throne under the pledge to give a constitution to his people such as would insure their participation in all branches of the government. This was effected in the constitutional charter of June 14, 1815, and France was delivered from its imperialism and confirmed as a national state.

Of still greater importance was the effect and result of the raid, by Bonaparte's armies, of the states of the Holy Roman Empire, especially Prussia. In Prussia it called out the intensest loyalty and national spirit. Through the reforms to which the names of Stein and Hardenberg are attached, Prussia introduced universal compulsory education and military service and fitted thus her entire population to take part in the national deliverance. Prussia became thus the heart of the new Germany, around which all the other states of the Holy Roman Empire of the German Nation should rally. The

students in her universities, the intelligent youth of the land everywhere, formed those patriotic societies so highly prized and praised in subsequent German history, and which produced the most effective national propaganda.

It was in the midst of such surroundings and under such a spirit that the powers, great and small, now gathered at Vienna to redraw the political map of Europe which the Corsican adventurer had so pulled awry in the pursuit of his imperial aims. Everybody of any great account was there; and they had just settled down to work, amid much bickering, when Bonaparte reappeared, and the whole matter of his defeat and banishment had to be done over again. It had a sobering effect upon the labor of the Congress; and from Waterloo (June 18, 1815) forward it wasted little time in strife, comparatively, and gave itself heroically to constructive work. The Russian Czar, the Holy Roman Emperor, the king of Prussia, and the kings of Denmark, Bavaria, and Württemberg were present in person, besides a large number of the princes of the smaller states of the Holy Roman Empire. Great Britain was represented by Lord Castlereagh and the Duke of Wellington, and France chiefly by the wily bishop of Autun, Talleyrand.

The problems before the body were evidently viewed by most, if not all, of its members as matters of restoration. To retrace the political lines of 1790 appeared to most of them to be the great task for which they had fought and were now to treat. But they created some things which had not existed before, as was inevitable; and it is to these that we must give our more particular attention in this study.

In Spain, France, and the Italian peninsula it was substantially a work of restoration; but in the middle, east, and north of the Continent it was something more than this in some respects. Spain was reëstablished under her old dynasty, and

with her natural physical boundaries on all sides except the west. Here the state of Portugal was left sovereign and independent, instead of being made a local self-government in union with Spain. The frontiers of France were readjusted as in 1790, and Louis XVIII brought back again to serve as king under the constitution he had himself given. Nobody appeared to understand that the spell of monarchy, real monarchy, could not withstand any such tinkering. Moreover, the southeastern boundary of France extended beyond its natural physical frontier in that it overlapped the Vosges and Ardennes mountains, and its northeastern line stopped short of it in not including the western part of the Spanish Netherlands. Here were problems for the future which would tax the wit and strength of man. On the whole, however, both in Spain and France, the coincidence of the geographical, economic, ethnical, and political frontiers was fairly preserved or attained; and western Europe had in 1815 fairly entered upon the modern period of nationalism as the basis of sovereignty and law,—had found the sanctity of its law chiefly in the new legitimacy of its source.

On the other hand, the reorganization in the middle-Mediterranean peninsula was little more than a restoration of a chaotic condition. The papacy and the States of the Church were of course restored. Tuscany, Modena, Naples, and Sardinia were resurrected under their old dynasties. Venice was restored to Austria, with Milan thrown in, and out of the two were formed the kingdom of Lombardy-Venice for one of the Hapsburgs. To Austria was also given a district of Tyrol south of the Brenner, the Alpine crest, and a strip on the east shore of the Adriatic. Nothing in the nature of a national union, except the shadow of the Holy Roman Empire, existed for the Italian peninsula. Here was a mighty problem which was to tax the strength, the patience, the in-

telligence and the courage of a large number of Italy's finest characters of the modern era.

As already indicated, the work of the Congress in the north and center of Europe was a little more constructive than this. Besides the restoration of Prussia under the Hohenzollern régime, with the addition of the Rhine provinces, a large part of Saxony, and the duchy of Warsaw,—creating thus a core of great strength and vitality around which the future Germany should gather in forming a real national state,—a German confederation of thirty-nine states was formed, with Austria as the leading state and the Hapsburg Emperor as the princely head. This new formation at the expense of the Holy Roman Empire of the German Nation produced the final collapse, formally and legally, of that great structure; and then emerged from its ruins, as competitors for the first position in the new national Germany, both the Hohenzollern and Hapsburg powers. Both of these had sovereignty over territory outside of, as well as inside of, the Holy Roman Empire; that is, each was somewhere completely sovereign and by clever manipulation could extend such districts at the expense of those where their power was not complete. The duchy of Prussia and the kingdom of Hungary were both centers of gravity for new formations; and had the latter understood its duty as well as the former and pursued it as successfully, we should probably have a happier Europe today.

The Congress further decreed the continuation of the union of Norway and Sweden, thus giving legal sanction to the nationalization of the great northern peninsula from the point of view of physical geography. The medieval connection of Norway with Denmark and that of Sweden with Finland were both political faults of a grave nature, which only a good deal clearer consciousness of what were the necessary elements of genuine national existence could correct. The fact, now, that

the Congress gave its approval to such consummations as above noted is convincing evidence that the European world had in 1815 fairly entered upon a new era.

The dispositions made regarding the Netherlands, Denmark, and Switzerland were not so happy from our point of view. Instead of incorporating the Spanish Netherlands in France and making Holland a state in the German Confederation; instead, also, of making Denmark a state of the German Confederation, and likewise the Swiss cantons north of the Alps and east of the Jura, the Congress manifested that it was still little more than half conscious of its historic mission and purpose, in that it created the sovereign kingdom of the Netherlands by the union of the Spanish Netherlands and Holland, upheld Denmark and strengthened it by incorporating Lauenburg into it, and increased Switzerland by three new districts, or cantons.

The legal confirmation of these three petty states in the middle of the European continent, thus hindering the development of this part of the world into the real national states which the historic movement required, was a matter of serious moment. Who was responsible for it? This is not a question easily answered, since the sympathy for the rights of "small nations" aroused by those powers (or that power) who are (or is) set upon restraining the development of large national states is very certain to prevent this question from being viewed in its true light. It does not take the student of European history very long, however, to discover that Great Britain is the large state which uniformly plays the rôle of the protector of the rights of the "small nations" on the Continent, and not only on the continent of Europe but everywhere else. Even when the United States of America threatened to break up into fragments, this great empire was found helping on the movement. In the language of modern slogan,

"Balkanize the world, except the British Empire" seems to be a fundamental principle of British diplomacy, all the time conscious that sympathy for the Balkanized parts goes hand in hand with the supremacy of the great empire over them all.

British diplomacy did not succeed at this juncture, however, in restoring Poland to the status of a national sovereignty, chiefly because of the stiff stand taken by Russia in this question, backed, as Russia was, by both Prussia and Austria. Poland's claim to national existence, politically and legally, rested entirely upon ethnological, or racial, grounds, which are too weak to support such a structure. There were no natural physical frontiers to the territory claimed by Poland as a national sovereignty. So far as territory was concerned it was just as well, if not better, that this district should be annexed to the adjoining national sovereignties. Economically also it was better. It secured broader markets, more general trade and intercourse. The racial differences, even variety of speech, were more easily to be overcome by education. Politically, however, such an existence brought many disadvantages to the European system of national states. It gave the Western nations a basis and an opportunity for intrigue against the central nations, which has always kept Europe in turmoil. According to the wisdom of the Congress of Vienna there is no natural place between Germany and Austria-Hungary on the one side and Russia on the other for another national state.

It was, however, in the lower valley of the Danube that the Congress failed most signally in its work of national political creations. The district lying between the Carpathians on the north and the Balkans on the south, with the kingdom of Hungary for its center of gravity in organization, furnished one of the very best opportunities for the development of a real national state on the eastern frontier of Europe. The

great obstacle which lay in the way of it was the possession by the Ottoman Empire of the territory bounded on the north by the entire course of the river Save to its confluence with the Danube at Belgrade, the Danube from Belgrade to the point where this great river breaks through the Carpathians, and the Carpathians themselves (on the upper side of this stream) to the point where they bend westward; that is, the entire valley of the lower Danube on both sides, the south valley of the middle Danube, together with the entire Greek peninsula. These were the provinces conquered by the Turks from the Eastern Roman Empire and held during the period between the fifteenth and nineteenth centuries. They covered the whole of one European geographical unity and fully the half of another, and, moreover, lapped over upon a third by some thirty thousand square miles. Of course, it was impossible for a congress of European powers to deal with this territory so long as it was in the hands of an Oriental empire. It might, however, have given some indication of what it considered a proper disposition to make of it in case it should be retaken from the Osmanli. The revolt of the population in the Balkan Peninsula was brewing at that very moment, and at least a sort of gentleman's understanding of what should be done with Constantinople might have been reached in case it should fall into the hands of revolutionists. The ambitions of Great Britain and of Russia prevented any natural opinions from being formed upon this subject. To any unbiased student a mere glance at the physical map of this peninsula would give impulse to the idea of a national Greek state covering the entire territory south of the crest line of the Balkans, with Constantinople for its capital, and holding the straits connecting the Black Sea and the Ægean. The fact that no such unselfish policy was determined on or even considered left this matter one of the two burning questions

of European politics and diplomacy upon which the whole European system was to be wrecked a century later.

The other question was even more serious, namely, the question of the future disposition of the Turkish provinces on the south side of the middle and lower Danube and the north side of the lower course of that river, but north of the line of the Balkans. No power in the Congress regarded the Turkish possession here as permanent, and no power but Russia herself considered the claim of Russia to anything more of it than what lay to the northeast of the Carpathians as having any validity from the point of view of physical geography. It is again true that exhausted Europe was not ready to make any effort to reclaim those districts from the rule of Orientalism. But everybody was speculating about their future, and it was again the statesmen of Great Britain and of Russia who were preventing any natural views from being formed on the subject. As before remarked, any unprejudiced student of the real trend of European political development would have said then that it was the mission of Austria-Hungary to unite all of this territory with Hungary in a national state, at the expense to itself of any territory outside of these frontiers of nature. But the Austro-Hungarian statesmen themselves were not more than half conscious of any such impulse at the time, and they had no support in the idea from the representatives of any other power; while Great Britain and Russia were quite clear in their views of very different solutions of this question, which they, a half-century later, promulgated, and out of the clash over which came the momentary success of the British plan, which laid the foundation for the present disorganization of the European continent,—a development which we shall have to follow later in much more detail.

The acts of this Congress were signed by Great Britain,

Russia, Austria, Prussia, France, Spain, and Sweden. Austria represented, as president, the German Confederation as well as the Austro-Hungarian Empire; and the small states, such as Portugal, Denmark, the Netherlands, and Switzerland, were ignored. It was thus practically a European settlement and European law.

Such was the situation in which the state system of Europe was left by the Revolution, which started as a French movement but became general for the Continent. In its struggle with the old system it had outlined its idea and it had gotten foothold in spots. In these spots it could fortify itself, and from these it could make its sallies and advances until the whole European world should be brought under its principle of organization; namely, a Europe of separate national states, in which the national consciousness of truth and right should be the source of law and give law its sanctity.

CHAPTER XI

THE HOLY ALLIANCE AND THE LESSON OF ITS FAILURE

No event of modern history is, from the point of view of our subject, more instructive than this creation, both in structure and purpose and in the lesson of its failure. The quarter of a century of misunderstandings, hatreds, violence, insurrections, wars, and crime, and the terrible and universal suffering and demoralization consequent thereon, had destroyed, very largely, all faith and confidence of man in man, and had moved them all, from prince to peasant, to reflect upon the weakness, ignorance, and faithlessness of humanity and upon the necessity of finding a more substantial basis upon which to rest truth and law than the reason, conscience, and will of man. Nothing was more natural than that in such a situation human thought should revert to the idea of the Christian state and make some effort for its reëstablishment. Great urge was lent to this general psychologic tendency by several very important occurrences. Among these are to be mentioned the following as of chiefest moment.

In the first place, the later course of the struggle against the Napoleonic plan for bringing the whole of continental Europe under his rule, and the whole course of the negotiations among the powers allied for its defeat and for the maintenance of national independence, had brought three remarkable personalities into close contact with each other for a number of years, out of which companionship grew an understanding and a friendship of most unusual and porten-

tous character. These men were Alexander I, Czar of Russia; Francis I, Emperor of Austria-Hungary; and Frederick William III, King of Prussia. They were all characters of a decidedly religious, not to say mystical turn,—especially the Czar,—and each in a certain sense represented one of the three great branches of Christendom, the Czar being the head of the Greek Church, the Emperor standing for the papal organization, and the King appearing as the upholder of the Protestant bodies.

In the second place, the sudden return of Bonaparte while they were gathered in Paris engaged in framing the formulas of the First Peace of Paris, and the flocking of the great mass of Frenchmen to his standard and the consequent renewal of universal war, when they thought that peace had been established, was to them a glaring instance of the futility of all things human and an entirely convincing demonstration of the necessity for finding a superhuman foundation for their work of restoration and reorganization.

Finally, they had always before their eyes the great facts that Europe's early organization by Charlemagne and Leo III had proceeded upon a religious basis, which had held good for centuries; that its downfall had been followed by continual strife, insurrection, war, and chaos; and that Bonaparte himself had enjoyed his greatest success and experienced his greatest stability while operating in understanding with the Pope and the curia. They also clearly comprehended that the code of Christian ethics presented the one uniform view of duty in which the whole population of Europe had been educated and to which adherence was practically universal.

Keeping all of these things in mind, nothing could appear more natural and consistent than that these three leading characters in charge of the reorganization of Europe should

have turned their eyes to the great moral principles of the Christian religion as the "Rock of Ages" upon which to rest the new structure. That they were thoroughly sincere in thought, faith, and deed cannot, as it appears to me, be questioned by any unprejudiced student of European history, nor that they felt as sure of success upon this line of action as that there was a God in heaven or a Providence in the affairs of men. And so before the adjournment of their second assembly in Paris, after Waterloo, they formed the sacred agreement between themselves entitled *La Sainte Alliance*, having date of the twenty-sixth of September, 1815. It was not a part of the Treaty of Paris but bore an entirely independent existence. It is a brief document, composed originally in the French language; and since every word of it is important to our study, we will incorporate a free translation of it here.

In the name of the most Holy and Indivisible Trinity: Their Majesties the Emperor of Austria, the King of Prussia, and the Emperor of Russia having, in view of the course of the last three years in Europe, and especially in view of the blessings which it has pleased Divine Providence to bestow upon those states whose governments have placed their faith and hope in it alone, acquired the profound conviction that it is necessary to rest the attitude to be adopted by the different Powers in their mutual relations upon those sublime truths which the eternal religion of our Savior has taught us, do solemnly declare, That this present act has for its sole purpose to make known to the whole world their irrevocable, impregnable determination to take only the precepts of this holy religion, the precepts of justice, charity, and peace, as their rules of conduct, whether in the internal administration of their respective states or in their political relations with each other,—precepts which, far from being applicable alone to the relations of private life, ought, on the contrary, to influence directly all of the resolutions of Princes

and guide their movements, as the only effective means of adjusting human institutions and remedying their imperfections. Consequently Their Majesties have agreed to the following articles :

ARTICLE I. In conformity to the words of Holy Writ which command all men to regard each other as brothers, the three contracting Monarchs will remain united in the bonds of a true and indissoluble fraternity, and, considering one another as fellow-countrymen, will accord each other assistance, aid, and succor on every occasion and everywhere ; at the same time, viewing themselves in relation to their subjects and their armies in the light of fathers to their families, they pledge themselves to conduct these in the same spirit of brotherly love with which they are animated in the protection of religion, peace, and justice.

ARTICLE II. Consequently the sole principle in force between the said governments or between their subjects shall be that of mutual service, of manifesting by an unchanging benevolence the mutual friendship which should animate them and move them to regard themselves as members of one and the same Christian nation ; while the three allied Princes shall look upon themselves only as the representatives of Providence for the government of three branches of one and the same family,—namely, Austria, Prussia, and Russia,—thus making their confession that the Christian nation of which they and their people respectively make part has really no other sovereign than He to whom belongs of right all power, since in Him alone are to be found all the treasures of love, knowledge, and infinite wisdom ; that is, God the Father, Son, and Holy Ghost, the Word of Life. Their Majesties recommend, therefore, in tenderest solicitude to their subjects, as the sole means of enjoying this peace born of a good conscience and alone durable, to strengthen themselves daily more and more in these principles and in the exercise of these duties which our Divine Savior has taught to men.

ARTICLE III. All the Powers who wish solemnly to declare their adherence to the sacred principles which have prompted this present act, and who recognize how important it is to the welfare of nations, so long agitated, that these truths should exercise in

the future all the influence to which they are entitled upon human destiny, will be gladly and affectionately received in this Holy Alliance.

Made and signed in duplicate at Paris, in the year of our Lord 1815 14/26 September.

Signed { FRANCIS
FREDERICK WILLIAM
ALEXANDER

In conformity with the original,

ALEXANDER

At St. Petersburg, on the day of the birth of our Savior, the 25th of December, 1815.

This document was sent to every power in Europe, except the Sultan and the Pope, for approval. These exceptions were made, naturally, because the Sultan was not a Christian and not the head of a Christian state, and because the Pope was not any longer regarded as a secular ruler. It was speedily approved by all those invited to membership in the Alliance except the regent of Great Britain and Ireland, George IV, who replied that personally he entertained the like views and feelings as those expressed in this document, but was not authorized by the constitution of his country to enter into any treaty with foreign powers without the countersignature of ministers responsible to Parliament. Under the guidance of such statesmen as Canning and Wellington it was not possible that this should be secured. They pronounced the scheme to be impracticable, and the Island Empire never became a member of this league of Europe for the maintenance of peace and order on the basis of the Christian religion and its moral code of justice and charity.

To the idealists of the Continent this attitude of the British government appeared hard and inexplicable. Here was, as they thought, the opportunity to regain for law the sanctity

of divinity in origin,—the one basis best understood throughout every state in Europe, except only the Turkish provinces, and one most likely to secure greatest readiness and universality in obedience. There is no convincing evidence that the British leaders regarded the construction of this Alliance upon this unselfish foundation as having in it any element of hypocrisy. They did not appear to doubt the sincerity of its authors. They seemed even to sympathize with these in any effort to protect Europe against any repetition of the terrible chastisement under which it had suffered during the quarter of a century from 1790 to 1815. What, then, could have been the cause of this humorous indifference with which the invitation to membership in the Holy Alliance was greeted in the great empire across the Channel?

To the impartial student of today, from a point of view independent of all the parties to this negotiation, the reason for the divergence of opinion is not difficult to find nor far afield to seek. It is to be attributed simply to the Englishman's philosophy of politics: that no political relations had then reached a stage of perfection which would permit of any arrangement of a general nature preventing further changes and readjustments; that continual comparison of ideas, continual compromise of conclusions, continual disintegration of the old for furnishing the atoms in the formation of the new, were what the analogies of nature required in the transactions of human beings; and that any contrivances which man might invent for defeating this natural course of development would prove futile and mischievous. In the First and the Second Peace of Paris and in the acts of the Congress of Vienna the powers of Europe had patched up the new Europe—so they thought—as best they could under the circumstances; and now to revert to the old theory of the Holy Roman Empire as to the origin and sanctity of law,—to free

itself from which Europe had thought and fought for three hundred years,—whereby to make permanent these temporary contrivances, simply appeared to the more mature mentality of the English nation as a trifle “fresh,” not to say puerile. In fact, the story went the rounds that the idea of this Holy Alliance of all Christian powers, as the means for securing peace, justice, and brotherly love in the European world, was suggested to the Czar by a woman, a Madame von Krüdener, who possessed a mystical influence (among other possible pulls) over His Majesty. The excitation of the risibles of the British statesmen and people was certainly not made milder by this bit of general gossip, considering too—as we must in estimating the relative value of things—that the dabbling of females in politics was not regarded as so natural a matter at that time as it is at present. At any rate, it is usually the English way of it, when such a situation presents itself, to say, “Let them try it out, while we will amuse ourselves as spectators of the game.”

They did not have a great while to wait for their fun in this case. The chief character of the play was at hand and had been already for a number of years on the scene. He was not a profound statesman, not deeply versed in the philosophy of history or social science, and not troubled by high ideals, but shrewd, suave, observant of every opportunity, dexterous in improving whatever occasion might offer, persuasive, deferential, handsome, gallant,—in a word, highly attractive and perfectly irresistible, a model diplomatist and wily politician, Klemens Wenzel Metternich, born of noble parentage at Coblenz in 1773, and educated in the University of Strasbourg, where he came at first under the influence of the purer ideals of the French Revolution, in the years between 1788 and 1791, and was, as a witness of the sacking of the city hall at Strasbourg by a drunken mob of revolutionists, later

repelled from these ideals in disgust and loathing, married in early manhood to the beautiful and highly accomplished granddaughter of the powerful chief minister of the Hapsburg dynasty, Prince von Kaunitz, and introduced thereby into the court of gay Vienna, where he soon became imperial ambassador to the courts at Dresden, Berlin, and Paris, and finally chief minister himself to the Hapsburg Emperor, from the year 1809 to 1848, in which capacity he not only molded the fortunes of the great house but guided more than anyone else the destinies of Europe. While generally maintaining friendship with Russia, Prussia, and Great Britain, he had, by his cleverness and faultless address, won the favor of Bonaparte himself, and thereby protected, in large measure, the Austro-Hungarian Empire against the destruction wrought by the great adventurer elsewhere. And when at last, in 1815, the Napoleonic Empire was definitely and finally put with the things of the past, Austria-Hungary was on the winning side and had obtained from Great Britain, Russia, and Prussia, for its part in the work, a recognition expressed distinctly in the fact that it was at Vienna that the congress of the powers met to redraw the political map of Europe and reorganize its institutions.

Such a character and personality, charged with the care of such interests, it was which now laid hands upon the Holy Alliance with which, as a chief instrument, to do the work of defending the House of Hapsburg against the impending movements for creating a national German state, a national Italian state, and for the development of genuine nationalism in the Spanish state,—since nothing short of a victory over such forces would maintain the existing standing of the great house in the political system of Europe.

With this clearly and continuously in view he had prevented any movement toward national unity in the German states or

in the states of the Italian peninsula from getting foothold in the two Paris treaties or in the acts of the Congress of Vienna ; instead of which, as we have seen, there emerged from the old Holy Roman Empire of the German Nation north of the Alps a confederation of some thirty-eight to forty sovereign states under the presidency of the Hapsburg Emperor, with some three or four others both sovereign and completely independent, and south of the Alps, in the peninsula, as many as eight sovereignties, with two or three of them under Hapsburg control. And now for the perpetuation of this situation he found the Holy Alliance eminently suitable. It was by no means an easy problem.

In the first place, the rising state of Prussia had been driven by the French invasions to appeal to the people of all the German states to unite under Hohenzollern leadership in order to rid themselves of the invader. Influenced by such great statesmen as Humboldt, Hardenberg, and Stein, the king had provided for the universal education and military training of his subjects and had promised them participation in government. Here was the threat of a real national Germany within its natural geographical and economic limits under the lead of Prussia,—Hohenzollern Prussia,—a creation which challenged the prestige and preëminence of the Hapsburgs. Metternich was, however, equal to the occasion, at least for the time being. He painted the picture of the excesses of the French Revolution so skillfully and vividly to the minds of the Prussian king and statesmen as to cause not only the king but such an idealist as Stein to falter and draw back. Two years of hesitation followed, when the meeting of some German university students at the Wartburg,—in commemoration of Luther and the battle at Leipzig,—on which occasion some patriotic speeches were made and some nationalistic songs sung and some anti-liberal literature consigned

to the flames, gave Metternich his chance to work upon the apprehensions of the Czar and the King with pronounced effect. Then came the assassination of the German poet Kotzebue by the student Karl Sand, in March of 1819, which was generally viewed as the beginning, if not suppressed, of a new "Reign of Terror." Both the Czar and the King now gave way completely to the persuasive representations of Metternich. The diet of the Confederation was called together in the autumn of that year and issued what is known in its history as the Carlsbad Resolutions, which provided for strict censorship of the press, for immediate suppression of all revolutionary movements, and for strict supervision of the universities, both as to the actions of the students and the teachings of the professors. Not satisfied with this blow at the advance of national unity, Metternich brought the ministers of the principal German states together at Vienna during the next year and extracted from them an amendment known as the Final Acts, which disposed of every faintest doubt regarding the character of the federation by expressly declaring it to be a league of sovereign states. He had done his work upon and through the Czar and the King with the influence furnished him over them by the principles of the Holy Alliance, which he made them believe—as he undoubtedly believed himself—could be maintained and sustained only by the suppression of every popular or liberal impulse.

His tactics regarding the situation south of the Alps were very similar and were productive of the like result. A revolt of the soldiery in the kingdom of Naples against King Ferdinand gave him the opportunity for intervention there. He summoned a congress of the representatives of the Czar, the Emperor, and the King to meet at Troppau in the autumn of 1820. The Congress soon adjourned to Laibach in January, 1821; and before it separated he had succeeded in winning

from both the Russians and the Prussians permission to invade Naples and Sicily with an army of sixty thousand men and quell the rebellion. This was quickly accomplished, and King Ferdinand was effectively backed in his policy of suppressing any popular movements which might manifest themselves. At the same time, taking advantage of the opportunity, Metternich cleverly addressed himself to quieting the uneasiness in Piedmont. Here was a state which was seeking to occupy, as to the unity of Italy, the same position that Prussia had come to occupy toward German unity. Certain members of the royal house were personally friendly with Metternich and had fallen under the charm of his elegant and persuasive manners. A revolt had broken out at Alessandria, and the mob was clamoring for a constitution, which King Victor Emmanuel refused. Metternich saw in the situation a chance to place upon the throne of Piedmont that member of the royal house who would be most subservient to his policy in the South. This personage was the king's younger brother, Charles Felix. Victor Emmanuel was made by Metternich to understand that it was far better for his house to have his brother sustained in power by Austrian bayonets than to take the chance of a revolution himself without such support. He abdicated under this pressure, and Metternich virtually guided for years afterwards the policy of this important kingdom.

During the same period a revolt in Spain, led by Mina, Riego, and Quiroga, broke out, and demanded the restoration of Spanish national independence under the constitution of 1812. The French invasions of Spain, and its connections with the Bonaparte Empire, had robbed Spain of its sovereignty and had enabled its South American colonies to fall away from it and set up for themselves. This latter event, or rather series of events, while depriving Spain of great eco-

nomie wealth, had placed its people in a better position for the formation of a genuine national state. For five years after the downfall of Bonaparte the revolutionary ideals had been gaining force in Spain, and in the early months of the year 1820 the storm burst. The king, Ferdinand VII, hastened to allay it by giving ear to the demands of the insurgents. He agreed to the reëstablishment of the constitution of 1812 and promised to govern in accordance with its precepts.

But this appeared to Metternich to be a direct challenge to the peace of Europe as guaranteed by the Vienna acts and the Holy Alliance. Should this be allowed to go unhindered and unrebuked, then might the methods and the rule of the "red cap" be restored everywhere. He hastened to communicate with the chief members of the Holy Alliance and to excite their apprehensions by means of vivid statements of fact, skill in logical deduction, and elegant impressiveness in composition which no statesman of Europe at that day could match or rival. They all gave ear to his invitation to meet in conference, and in October of 1822 they actually assembled in Congress at Verona; and after a short session, under the influence of Metternich, they voted to authorize the king of France to invade Spain and quell the insurrection and free King Ferdinand from the control of the rebels. Despite the advice of the British statesmen, the French king accepted the mandate, sent his nephew, the duke of Angoulême, into Spain with an army, which proceeded to Cadiz, released King Ferdinand from the hands of his captors, hanged the leader of them, Riego, on a gibbet some fifty feet high, disbanded the Spanish army (which was not to be relied on by the Holy Alliance), and reëstablished the unlimited authority of King Ferdinand, supported by the "Army of the Faith."

Such in 1822 was the picture of reorganized Europe after the upheaval of the quarter of a century of revolution and of

the efforts of Bonaparte to solve the relations of its states by welding them into a European empire. It would be difficult to find a name which would adequately describe it. In fact, none has to this date been invented. It is sometimes, yes frequently, called the Holy Alliance system, and it is quite true that the Holy Alliance ideals furnished the larger component in its make-up. But there were others, as we have seen, of almost equal importance which must be taken into account. Most weighty among them was that it recognized a large number of independent sovereignties as having legitimate existence within it, despite the fact that sound logic required a greater and greater subordination of all of them to some superior sovereignty which would furnish a uniform interpretation of those ideals of peace, justice, and charity according to which all government should be administered and for the realization of which all law should be enacted and from correspondence with which law should derive its sanctity, its compelling power over the conscience and will of man.

Instead of this, as we know, the system recognized at least three varieties of view possible in the case of these interpretations, namely, that of the creed of Oriental, or Greek, Christianity, that of the Papal Church, and that of Protestant Christianity. Here was an opportunity left wide open for differences of opinion, regarding the meaning and requirements of the ideals and purposes of the Holy Alliance, quite sufficient to reduce its influence from time to time and ultimately to make wreckage of the structure built upon them. So long as such a master mind, such a skillful manipulator of men, such a convincing debater, and such a genial, hail-fellow-well-met character as Metternich,—backed by the empire which stood nearest, at least, to the Holy Roman Empire and its claimed sanctity, and by the Papal Church organization—held the guidance of affairs in hand, such pos-

sible differences might be held in abeyance. If, as a fact, they were or were not, we shall see as we pursue the history of the formation of the new system of the sanctity of law. And if we find that, with all of these advantages and many others, they were not, then have we here a lesson of mighty importance whose meaning and significance, if rightly conceived and duly heeded, may preserve us from the commission of like errors at the present or in the future.

So predominant was the influence of Metternich, however (before 1830, at least), and so successfully did he operate this system of restoration, that it would seem we can do no better than to call it the Metternich system, which may be defined (or rather described) as a political system resting upon a code of ethics which is part of a creed of revealed religion,—a system which, however, admits the legitimate existence of an indefinite number of independent states, political creations which may have come into being and may continue to function without any regard to the indications of nature and history in the fixing of their extent and frontiers, and without any regard to the character of their respective constitutions or forms of government, each of which is equally authorized to place its own interpretation upon the code of divine ethics on which all claim to rest their legislation and administration, all possible differences in which should be obviated, and all actual ones composed, by an all-controlling personality operating through persuasion and, if necessary, intrigue, but not furnished with any superior authority of a compulsive character whereby divergence from his own view could be dealt with as disobedience to law and punished accordingly.

It was in some respects the Holy Roman Empire over again, in that it based the sanctity of law upon divine revelation; but it differed from the theory of this great system,

again, in that it did not claim a monopoly for any one state of the authority to interpret that revelation and to cast its behests into the form of law for governing the conduct of men. It was, on the other hand, delivered from the contests between Pope and Emperor to which the Holy Roman Empire was exposed, at the same time that it enjoyed a certain support from the traditions of both of these institutions, to which it was felt by all to be the only heir.

Coming, thus constituted and sustained and so deftly manipulated, upon a thoroughly exhausted and humbled Europe, it seemed fully able to preserve the existing status, created by it and taken under its protection, indefinitely. If it could not, then would it be difficult indeed for the mind of man to invent and administer any scheme of control which could, unless its failure should give birth to the thought that, back of man's inventions, nature and history are working their evolutions for the constant and continuous perfecting of civilization, and that man's creations, therefore, must be brought into accord with these evolutions in order to enjoy any degree of permanence, and must improve as these require in order to escape the fate of antiquation. With such clear and large objectivity of view and with such total unselfishness in purpose, it may be possible for the real philosopher to comprehend the lesson of such failure and to suggest in substitution therefor a structure not so clearly and completely exposed to the attacks of these irresistible forces, but carried forward by them in the great work of finding a law of ever-increasing perfection and perfectibility, sustained by a sanction of ever-growing weight and convincingness. Let us now return to the course of the historic movement after 1822, and endeavor to discover the directions of the needle of its compass and to follow them wheresoever they may lead.

CHAPTER XII

TRIUMPH OF THE REVOLUTION OVER THE METTERNICH SYSTEM OF EUROPEAN ORGANIZATION

A famous German historian once wrote that nothing in history is ever considered as settled until it repeats itself. We might add, in some cases, repeats itself several times. And so after the Metternich system, which was substantially the system of the Holy Roman Empire, had apparently fastened itself upon Europe in the first years of the third decade of the nineteenth century, signs of the inevitable struggle between it and the modern principle of national sovereignty as the basis of law began to manifest themselves.

The first movement in this direction which we have to follow was the Greek revolt against the unnatural and unnatural rule of the Turks. Already in 1820 had Alexander Ypsilanti called the Greek nation to throw off the hated oppression; and in 1822 a body of men met in Epidaurus, calling themselves a national congress, and framed a constitution for Greece. Instead, however, of claiming the territory of the peninsula up to the Balkans, with Constantinople for their capital, as physical geography required, they modestly stopped about halfway up and left the Sultan still seated in this great strategic city. As the test of military strength between the two parties grew fiercer and fiercer, Great Britain, France, and Russia intervened in behalf of Greece; and by their aid the Greek national state was established, and recognized by all the powers,—Turkey included,—before the end of 1832, as a legitimate member of the European family of

nations. Here was a fair beginning for the formation of a national sovereignty which might cover the whole of the Balkan Peninsula, as intended by nature and history. The great question of its future was whether the very powers which had done most to bring it into existence—namely, Great Britain and Russia—would permit it to fulfill its appointed destiny. We shall see.

It was, however, in France, most naturally, that the conflict between the two systems regarding the source and sanction of law should be waged most distinctly and poignantly. During the first years of his restoration the old king, Louis XVIII, demeaned himself with a good deal of prudence as well as benevolence and appeared to be settling down to a real constitutional régime. The mutterings of the coming storm did not really commence to be noticed before the beginning of the twenties. On the fifth of June, 1822, appeared a royal decree reëstablishing the office of Grand Master of the University and appointing the Abbé de Frayssinous to the position, with all of the old powers and functions of this potentate. This was an exceedingly ominous beginning. It meant nothing less than placing the supreme guidance of all education in France in the hands of the Papal Church; and this signified, later, the education of the rising generations in the doctrine of authority and law as based on divine revelation through Pope and Emperor or king. It was preparing the foundation in the most thorough manner for the restoration of monarchy, not as executive office simply, held by hereditary tenure at the will of the nation, but as the God-selected organ for imparting the divine will to man for his government and conduct. These edicts were soon followed by the suspension of Guizot's lectures on modern history and Villemain's lectures on literature and by the suppression of the Normal School and the School of Medicine.

The true character of these measures was quickly realized, and the forces of opposition to them began at once to draw together.

Before the conflict could come to issue, however, the old king Louis XVIII passed from life, in September of 1824, and was succeeded by his brother, the duke of Artois, under the official name of Charles X. He promised strict adherence to the provisions of the charter (that is, constitution), but retained the Villèle ministry, the ministry responsible for the edicts and decrees already mentioned; and before a twelvemonth had elapsed he manifested the same views as to the origin of authority and the sanctity of law as entertained by his royal brother. On May 30, 1825, he subjected himself to consecration by the bishops in the cathedral at Reims, a ceremony which Louis XVIII had omitted. He also championed the enactment of the code of sacrilege, with its penalties as severe as penal servitude and death with mutilation. Before the beginning of the year 1826 it was evident that the king was bent upon the restoration of the ancient régime. His words and acts called out hostile demonstrations in every part of the kingdom. While he and the members of his government were allowed to pass without any public manifestation of enthusiasm or even interest, the liberal leaders, such as Casimir-Perier, General Foy, Lafayette, even the duke of Orleans, were greeted with most vociferous applause whenever they appeared. Still more to the point, the judicial bodies refused to give judgment against the newspapers in the prosecutions by the government against the press; that is, refused to uphold the censorship of the clergy over the press. In other words, the lawyers had now ranged themselves against the king and the clergy in the matter of censorship over research and publication of its results. This hostility was openly manifested at the New Year's reception of the

court of 1826. When the members of the High Court of Justice approached His Majesty with their greetings, they were bidden to pass on without further ado. This cutting slight was well understood by everybody in the country, and few doubted from that moment that France was headed for another catastrophe. The chief, almost sole, object of the king at this moment seemed to be the elevating of his old aide-de-camp and bosom friend Jules de Polignac to the post of chief member of the royal council. He was already the leader of the court party, but the trouble was that this party was not the majority party. He must be able to unite some other party, or members from some other parties, with the court party in order to make a successful prime minister. The king had therefore to bide his time for the accomplishment of this pet aim. He had to work along on the line of a new creation of peers,—which was his constitutional prerogative,—so as to make a majority in the Upper Chamber favorable to the crown, and on the line of bringing the voters more and more fully and completely under the influence and direction of the clergy, so as to maintain a majority in the Chamber of Deputies of like tendency. On the twenty-fourth of June, 1827, His Majesty, by royal decree, established a virtually clerical censorship over newspapers and all publications appearing periodically; and in the middle of the autumn of that year he took the decisive step of dissolving the legislative bodies, ordering a general election of deputies and creating some seventy-six new peers. Despite all of these movements the elections went against the existing ministry of Villèle, and the king felt compelled to allow it to resign. He still hoped to hold out by means of his new peers in the Upper Chamber. He appeared to think that the time had come to appoint Polignac to the headship of the royal council and strike out boldly, but Villèle is said to have dissuaded him for the

moment from this course. It was probably Villèle's idea that he should appoint Martignac chief councillor, without, however, giving him the title of president of the body. This move was felt on all sides to be a sort of makeshift; and all parties were prepared by it for what came to pass during the course of the next year, namely, the appointment of Polignac as Minister of Foreign Affairs. The exact date of this royal act was the ninth day of August, 1829. It is not sure that the king meant anything more by this act than getting a personal favorite into office; but the liberals all took it for granted that it was the gage of battle between the old and the new,—between the system of authority and law by divine revelation through the king by the grace of God, and the system based on national consensus of opinion and will. The liberal press was so pointed and vigorous in thus representing the issue that the Royalist journals, except one or two, finally joined in with them in their denunciations of the Polignac ministry (as the government had been termed after the prince's appointment simply to the foreign seat in the council). It was now prevalent as gossip that the Chambers would refuse to vote the budget, and that in case of any conflict with the crown over their power to do so they would elect the duke of Orleans king in place of his brother. A new daily paper, entitled the *National*, edited chiefly by Louis Adolphe Thiers, the famous lawyer (forty-odd years afterwards president of the French Republic), now appeared and took up the fight for national sovereignty. The chief slogan of this paper was, "The king reigns but does not govern." It was this periodical and this man that more than any other—if not more than all others—provoked the issue of the royal decrees of July 26, 1830, after having prepared the nation for them and taught the nation how to receive and answer them.

These decrees dissolved the newly elected and constituted

legislative chambers, changed the existing law of elections, ordered new elections for the Chamber of Deputies, forbade the appearance of any newspaper or periodical without the consent of the government,—which permission must be renewed every three months,—and reinstated ministers dismissed by act of the Chambers.

These things were done by the advice of Polignac, and some of them, at least, were clearly departures from the charter. Thiers and his party of lawyers now had things in their own hands, and they did not make France and the world wait long to see what they proposed to do. The editors and contributors to the liberal press, some forty in number, met in the offices of Thiers's newspaper, the *National*, and drew up a protest against these decrees, pointing out to the people in ordinary language their unconstitutionality, and signed the same boldly with their own names, contrary to the prevailing usage of leaving such articles unsigned. This provoked the issue of the royal order for their arrest, by which act the government was simply unwittingly playing into their hands. The royal decrees had not as yet been promulgated in legal form, and therefore no one of them, whether constitutional in substance or not, was binding upon the courts; and these judicial bodies worked with the lawyers in liberating arrested persons or ordering bail or giving favorable decisions, and so the government could make no headway by means of the civil administration against the protesters. It had to have recourse to the military, and then it found that it could not rely upon the soldiers. They too preferred to follow Lafayette and the tricolor, rather than Marmont and the royal emblem; and before the end of the month the French Revolution had repeated itself and demonstrated its historical necessity. Thiers and his lawyer and editor friends, who had prepared its course, knew just what to do with it. On the thirtieth of July

the editors of the *National* distributed a placard throughout Paris demonstrating the impossibility of the French nation's retaining Charles X as the constitutional king of France, and at the same time emphasizing the difficulties in the way of establishing a republic, and advising the nation finally to declare the throne of France vacant and to elect the duke of Orleans, Charles's brother, to fill the same under the limitations of the existing charter. The response to this appeal was universal. Popular approval and the legislative chambers pronounced the throne vacant and elected the duke of Orleans as king of the French.

In order to get the exact bearing of this movement on the subject under analysis in this book, it will be advantageous to examine these events with a little more particularity. It is clearly evident that the French lawyers and jurists of the school of Thiers were quite anxious to preserve the forms of existing legality in bringing about this change of 1830. First, it must be kept steadily in mind that the constitution under which France was governed from 1815 to 1830 proceeded from the king, not from the people. Its legal title was *charte constitutionnelle*. It was consequently amendable, or changeable, by the king, if changeable at all. Any assumption by the people or any part of the people, either immediately or by representatives, to do away with it, or change or modify it in any manner, was therefore extra-legal. If successful, it would be termed revolution; if unsuccessful, rebellion.

The lawyers were greatly relieved, therefore, when they learned, on August third, that the old king had abdicated, and his legal successor, the duke of Angoulême, had renounced the succession for himself in favor of the king's grandson the duke of Bordeaux, and the king had appointed the duke of Orleans regent of France during the minority of the duke of Bordeaux, under the title of "Lieutenant General." They

still found difficulty in persuading the duke of Orleans to accept this office, and the prevailing argument over the duke appeared to be their statement to him that otherwise they would be obliged to establish the Republic.

Once in power as regent and lieutenant general of the military and naval forces, and with the Chambers (called by him to assemble) in session, the way to the throne was open,—but to a very different throne from that which Charles X had vacated.

The newly assembled Chambers took up the charter, amended it in many most important points,—such as the abolition of Roman Catholicism as the state religion, the reinstatement of trial by jury in all press-law cases, the repeal of all censorship, the adoption of the tricolor as the emblem of France, the establishment of the liberty of instruction, etc.,—then adopted it as their own work, and imposed it on the government. They then invited the duke of Orleans to appear before them and take his oath to observe this constitution and to govern in accordance with its provisions as king of the French. The majority in both Chambers voting in favor of these propositions was overwhelming, and represented very probably, at the time, the will of the French nation. The duke hesitated no longer, but took oath to observe the constitution and entered upon the administration of the government by the appointment of his first ministry on August 11, 1830.

However strenuously Thiers and his lawyer friends and colleagues had attempted to proceed according to legal or customary forms and usages, what we have here was a revolution,—a revolution of the most pronounced sort, a revolution in the deepest principles of political and social civilization, the definite transition, in the great nation of the west of Europe, from all the trammels and traditions of the universal

Christian empire—with its doctrine of sovereignty and the sanctity of law as resting upon the divine will, and the revelation thereof, through Pope and Emperor, for the government and conduct of man—into the system of sovereignty and legal sanctity as based on the human consciousness of truth and right expressed through national organs for ascertaining the consensus of national opinion. Furthermore, even those who consider the great change in French history which occurred during the summer of 1830 to be a revolution do not all—nor do any considerable number of them—appear to appreciate the gravity and deep meaning of the same. They generally attribute far too much to vulgar ambition on the part of Louis Philippe, the duke of Orleans, to become king, and to the vulgar crowd which backed him. A thorough and unprejudiced examination of the public documents and periodicals of the day leaves a decided impression upon the conscientious inquirer that the duke was not very ambitious to become king, and that it was the jurists, lawyers, newspaper editors, and literary men who, as the most natural representatives of a nation not yet fully organized politically, assumed to act for the nation in this period of fermentation, and who made the duke understand that the choice, as the nation saw it, was not between the old king and himself, but between himself as constitutional king under the sovereignty of the nation,—the maker of the constitution—and the Republic. The duke evidently felt that as king, though under the limitations of the constitution,—which he must swear to observe and obey,—he could save something of the rights, privileges, and powers of the ancient régime to their old possessors, instead of seeing them all swept away by a more radical *bouleversement*. It is also evident that many members of the Bourbon family held the same opinion. In fact, as we shall see a little farther on, it was the effort of Louis Philippe to

do this very thing which contributed as much as anything else to make the Revolution of 1848 an historic necessity.

Before, however, tracing the history of the effort to solve the problem of the organization of the French nation under the form of what is usually termed the constitutional monarchy, and of creating thereunder a sanction to law which should take the place of the doctrine of law as divine command revealed to man through divinely appointed agents, let us take into account briefly the effect which the Revolution of 1830 in France had upon the solution of the same all-comprehensive problem in the other parts of Europe.

Beginning with the lands lying nearest to France on the northeast, let us make reference, first, to the kingdom of the United Netherlands, constituted by the union of the Dutch republic and the Spanish Netherlands and legally reconfirmed by the Vienna acts of 1815,—one of those petty states of continental Europe through which Great Britain maintained its influence over, and its hold upon, the politics of this part of the world. As has been already pointed out, it presented no one of the three unities necessary to the formation of a genuine national state. Its territory belonged about half and half to the German geographical unity on the one side and the French on the other; likewise its economic relations and substantially, also, its ethnical. In other words, it was an artificial political structure, and it was now to be seen whether the revolutionary mind of 1830 had come clearly enough to itself to so regard it and to decree its dissolution. Not a month passed after the famous July days in Paris before the western half of the kingdom of the united Netherlands was in open revolt, and the plan for its union with France generally discussed and favored in both France and the rebellious region. The king, William I, sent his Dutch troops to Brussels to quell the revolt; whereupon Prussia, as one of the signatories

of the Vienna acts, declared itself ready to back the king in the execution of his purpose, while the French government proclaimed that it would send troops into the rebellious district if the Prussian king should do so. It certainly had the appearance, for the moment, that the kingdom of the united Netherlands was on the point of being separated politically into two parts, in substantial accord with the requirements of physical geography, economic relations, and ethnical character, and these parts absorbed by France on the one side and Prussia on the other. This would have been natural and would have fulfilled with one grand movement the urge of history in the formation of genuine national states. But, alas, this fair prospect was destined to be only partially realized at the moment, and was brought to a halt on halfway ground by the craftiness of Great Britain in its steadily maintained foreign policy of Balkanizing the European continent and by the timidity of the good French king—occupied entirely with the problem of consolidating his own dynasty—himself. A diplomatic conference, called to London and under British influence, decreed the separation of the united kingdom into two parts, indeed, but erected each part into a separate and an independent sovereignty; and King Louis Philippe not only refused to give ear to his own countrymen in their demand that the western part (now named the Kingdom of Belgium) should be united with France, but refused to allow his son, the duke of Nemours, to accept the crown of Belgium, which had been voted by the Belgian constitutional assembly at the beginning of the year 1831. The divorce from the bonds of the unnatural unity had been accomplished; but the remarriage of the parties in fulfillment of their natural affinities was indefinitely postponed, and the postponement remains today one of the stumbling-blocks in the way of the genuine political nationalization of the European continent.

The states of the German Confederation felt in some degree the effects of the upheaval in France, especially those along the French frontier. A number of them succeeded in securing constitutions, either by royal grants or by the acts of more or less popular conventions,—such as Brunswick, the Kingdom of Saxony, the duchies of Saxe-Meiningen and Schwarzburg-Sondershausen; also the state of Hungary, of the Austro-Hungarian Empire, where Kossuth appeared at this date. But the movement of greatest promise in the direction of genuine development in middle Europe at this period was the so-called German Zollverein, or Customs Union, composed of all of the states of the German Confederation except Austria. Here was an economic unity of all the German states under the leadership of Prussia, which was an important step in the direction of the political unity attained forty years later. It was very important from three points of view, namely, the establishment of economic nationalism among the German states, the advancement of Prussia to the headship of the same, and the movement of the Hapsburg empire down the Danube. These tendencies toward natural, national political organizations were not radical but very sound, and corresponded well with the German genius for doing things conservatively, not to say slowly. They furnished a good foundation, or at least a good starting-point, for the developments of the next half-century in the middle of Europe.

A start was made at this juncture, also, in the most unpromising section of the European continent for national unity, namely, the middle peninsula of the Mediterranean, Italy,—a term used by Metternich at that period as a mere geographical designation. The great Austrian statesman did not seem to have any comprehension whatever of the importance of the element of physical geography in the political

organization of a real nation. We call this the most unpromising spot at that date for such a development because of two apparently most insurmountable hindrances standing in the way of it, either of which seemed amply sufficient to prevent it. One of them was the existence of the States of the Church and the papal seat as an independent sovereignty in the very heart of it, and the other was the Austrian states and provinces on both sides of the ecclesiastical dominions. In other words, here were the two bearers of the old doctrine of sovereignty and legal sanctity by divine authority through revelation to Pope and Emperor still in possession of nearly all of the peninsula. In spite of these most untoward conditions, however, the shock of the Revolution of 1830 in France sent its tremors across the Alps into the upper valley of the Po. Here they found the prince, the popular leader, and the power for the development of national political unity in Metternich's geographical unity (bearing then the name of Italy): Charles Albert—of the royal house of Savoy-Carignano, king of Sardinia-Piedmont—and Joseph Mazzini, the brilliant scholar, linguist, and historian, son of a wealthy, accomplished, and learned physician of Genoa. Mazzini, with the aid especially of a Polish refugee named Ramorino (who was also of Latin origin), founded a political society, or party, which bore the name *L'Italia Giovane* and which labored steadily and continuously, in secret and in the open, until forty years later, with other personalities in the lead,—Cavour and Victor Emmanuel,—it accomplished the great national development which will be described further on.

This enumeration of the effects and results of the Revolution of 1830 will not be complete without some slight reference to a movement which was erroneously considered to be in the line of national development by the actors in it, but which was fortunately unsuccessful, namely, the revolt in the

Polish territory against the government of the Czar. At the close of the year 1830 and the beginning of 1831 the Czar's representative was driven out of Warsaw, and His Majesty was declared by a group of revolutionists, calling themselves the Diet of Poland, to have forfeited the crown of Poland. In a few months, however, he had reoccupied the country with his troops, and had put an end to the fiction of a crown of Poland and reduced the self-styled kingdom to the status of Russian provinces. The geographical and economic elements necessary in the organization of a real nation were wanting; and it was here demonstrated once again that a race, or part of a race, or a mere population made up of different races, does not, regardless of these other elements, constitute a nation in a political and juristic sense,—in the sense necessary to give law legitimacy in origin and sufficiency of sanction. The Parisian mob wished the French government to recognize the revolution in these Russian provinces and to aid it, but the new king was of a different mind, and the legislative chambers likewise; and the Holy Alliance was strong enough in middle and eastern Europe to prevent interference in behalf of the insurgents from any other quarter.

We may now return to the consideration of the very interesting attempt to solve the problem of the organization of a national sovereignty with a strongly limited suffrage, a universally prevailing religion holding to the papal doctrine of the origin of truth and law and of its transmission by revelation through certain divinely appointed agents to man, and with the executive side of its government holding by hereditary tenure. This is the one great question of the political history of France from the summer of 1830 to the spring of 1848.

It will be remembered that the French constitution of 1830 was the charter granted originally by King Louis XVIII to

the people of France and, by the Revolution of 1830, assumed, with certain modifications, to be the work of the legislative chambers created in the charter and imposed by these legislative chambers upon the new king whom they elected. That is, this body, consisting of a Chamber of Peers and a Chamber of Deputies, assumed, by the Revolution of 1830, to be the sovereign organization of the French nation, upon which all political and legal authority must rest for legitimacy and in which all law must find its ultimate sanction. Furthermore, we must keep clearly in mind that the members of one of these Chambers, the peers,—some one hundred and fifty to two hundred in number,—were selected by the king, and that those of the other,—less than five hundred in number,—were elected indirectly by less than thirty thousand voters in a population of some thirty million; and, lastly, that while no established religion was created or allowed by the charter, it was stated as one of the modifications in the same, upon its being declared by these bodies to be the French constitution of July, 1830, that Roman Catholicism was the creed professed by the majority of Frenchmen,—in other words, that the majority of Frenchmen held the belief that all truth and authority proceed from a divine source through divinely appointed agents, the old principle again of the papacy and the Empire.

In brief and general outline, such were the ideas and forces with which the new constitutional monarchy found itself surrounded, upon which it must build, and out of which it must fashion, the institutions of the national French state. Would the new king prove equal to the great task?

There is considerable evidence that he was conscious of the seriousness of the problem. He appeared, as already indicated, to recognize it as a first principle of the national state that its political boundaries should not transgress its physical

geographical frontiers; and he held tenaciously to this view, even when the large majority of the French people were pressing for intervention in foreign states. He was also quite indifferent to a colonial policy. He seemed to be haunted by the idea that holding colonies was consistent only with a general imperial system. In this too he found that he was unpopular,—that the masses were still influenced by the Napoleonic inoculation on this subject. There was no time, probably, from the beginning to the end of his reign when he could not have assembled an overwhelming army of volunteers for carrying the flag of France to the Rhine, or intervening in defense of an independent Poland, or bringing the whole south coast of the Mediterranean under the French colonial rule. There is no question that had he made any movement in either of these directions, the powers of the Holy Alliance, and Great Britain also, would have refused to recognize the new king and would, if necessary, have restored Charles X at the point of the bayonet. But however much such considerations weighed with the king, they had next to no influence over the minds of the masses, whose foresight may be measured by the length of their noses, and even that much (or little) neutralized by the storm of mob feeling.

In the second place, the king manifested a fairly clear sense of the necessity of the freedom of thought and its expression to the existence and development of the national state. The test in regard to this point came to trial under several issues, one of which presented itself very early and with which the government dealt rather unhappily, namely, the formation of political parties. The theory of the new kingship was, of course, that it was nonpartisan. But the attempt to follow the British system of parliamentarism, where the Cabinet introduces the most important subjects of legislation as royal propositions and organizes their backers

in the legislative bodies into a ministerial party, made this futile. Already, in the first session of the Chambers convoked by the new king in August of 1830, the party divisions appeared. Four tolerably well-organized parties manifested very quickly the attitudes they would assume toward the royal government. These soon came to be known under the titles of "Legitimists," "Bonapartists," "Republicans," and "Socialists," and immediately the play began on the part of the ministers of the king to build up out of the different shadings of these parties and within these parties a ministerial majority. Such men as Benjamin Constant, the duke de Broglie, Guizot, and Casimir-Perier made up the royal Cabinet at the moment and undertook the organization and leadership of the ministerial party,—termed at the moment, rather indefinitely, the Party of Resistance,—while the members of the several parties opposed to this party began to call themselves the Party of Progress. Two difficulties stood in the way of this development from the outset. The first was that the socialists would not affiliate with either party, but held themselves free to dicker with either in pursuit of their economic aims. This irritated the government, which saw in such a policy an attempt to make any government impossible or, at least, extremely difficult. Under the influence of this view the king was induced to give his consent to an edict forbidding the public meetings of the adherents of this party, which was immediately represented as an interference by the government with the freedom of opinion and of speech; while very naturally the party became a secret society, with secret meetings and secret propaganda everywhere and always hostile to the government.

The other difficulty was that, having so little and so limited experience with parliamentary government, the ministers themselves had not yet learned to reconcile their petty dif-

ferences of individual opinion with their larger principles of agreement or to subordinate them thereto. The first and very able ministry of Louis Philippe went to pieces in this exaggeration of individual independence among its members; and before the expiration of six months from the date of its formation such indispensable aids as Broglie, Dupin, Guizot, Louis, Molé, and Casimir-Perier resigned from it. In other words, the exercise of freedom of opinion and of speech by the people was being suppressed by the government at the same time that it was being excessively practiced by the government itself; and while experience with parliamentarism might remedy, in some degree at least, the latter defect, it was not so likely to mitigate the former. How touchy the people were upon the point may be concluded from the action of the students, who had, upon being appealed to by the government, joined with the national guards in maintaining order. Rumor had come to them that while the motion in the Chamber of Deputies to thank them for their aid was in course of passage, some of the members had declared that the status of order was the necessary condition precedent to the exercise of free speech. The students immediately and unhesitatingly declined to accept the vote until the right of free speech should be recognized under all conditions and without any limitations.

The new ministry, under the presidency of Casimir-Perier, undertook to deal with disorder with an iron hand. It introduced and carried through a bill empowering the government to require the military to fire on crowds in the streets after three ineffective orders to disperse. This, of course, enabled the government to control the discussion of questions in the open and, as might have been expected, gave mortal offense.

The liberty of instruction was now denied by the government, under the issue of closing the private school which had

been opened by count de Montalembert. The newspapers did not let this pass unnoticed, and in the fight which developed between them and the government some of the journalists were fined and imprisoned. At the same time the government elaborated and secured the adoption of a school law the aim of which was to free the schools from clerical control.

At length, in February of 1834, the ministry introduced a bill into the legislature for limiting the freedom of association for the public discussion of political questions, and it passed by a large majority in both Chambers. In spite of it the labor unions began now to appear. In the spring of 1834 they ordered a general strike, which developed into a revolt and threatened to become a revolution in the city of Lyon. It continued with great violence for nearly a week and was then conquered only by the employment of the army. The disturbance reached even to Paris, and was overcome then only by the use of the like means. The Chamber of Peers was now invested with jurisdiction over the leaders of such movements, instead of the regular courts,—a step which caused loud complaint against the king's government and the legislative chambers and was held to demonstrate the necessity for their reformation.

The king thought to meet the growing difficulty in carrying on the government by dissolving the Chamber of Deputies and appealing to the voters to return members who would be more amenable to the representations of the ministry (when these latter could themselves agree upon any project for law), and obtained in this way a working majority in the new Chamber; but still laws enacted by this legislature did not seem to have any sanction in the reason and conscience of the people, and the passing of Lafayette, which occurred in this year, robbed the law of a good deal of the sanction which springs from the conviction that the executive is able and

resolved to enforce it. The king had undertaken to overcome the dissensions in his ministry by himself settling the differences between its members, but this did not work. Accustomed as they had been to such a latitude of individual freedom, they could not readily accommodate themselves to any such tutelage and leadership. During the summer and autumn of 1834 there was constant changing of ministers and little else, and no progress was made toward genuine parliamentarism. The conflict between the king and his ministers became daily more acute, and culminated finally in the interpellation in the Chamber of Deputies as to the cause. The committee charged with the investigation laid the whole responsibility upon the king, who at once changed his prime minister and appointed the duke de Broglie to that office. The government continued its hostility to the newspapers and went so far as to imprison the responsible editor of the *National*. The journals, however, stood their ground, and struck back until the popular mind became confused and chaotic. The notorious attempt on the king's life of July 28, 1835,—in which some forty persons lost their lives, among them Marshal Mortier,—served only to excite the government more decidedly against the license of the press, and led to the enactment of the very oppressive "laws of September" (1835), according to which this freedom of the press was well-nigh completely annihilated.

The kindly-natured king seemed for the moment to get a view of the abyss toward which the French state and society were hurrying. He created a new ministry and made Thiers, noted as a sound progressive, its chief, with the promise of a liberal policy. Disagreements between the king and the premier brought this Cabinet to the ground and made of Thiers a standing enemy. In the midst of this confusion Louis Napoleon, who claimed to be the son of Louis Bonaparte

(king of Holland) and nephew of the emperor Napoleon, appeared at Strasbourg and then Boulogne, and, although quickly disposed of, gave notice that here was another organization for France ready and waiting in case it should be wanted.

In October of 1840 the king intrusted the presidency of the council to Guizot. This was plain notice that he had turned his back upon the party of progress and had made up his mind to stand pat. The course was now steadily toward the reappearance of the Revolution. With Thiers as the leader of the opposition, Guizot had his hands full all the time and was able to do little more than keep a bare majority behind him in the legislative bodies. The clergy understood their position of great strength in this balance of political parties and demanded control of secondary education. The officials favored their claim, and they were gradually assuming it after 1840. This was, of course, striking at the roots of the freedom of thought and speech. In making thought uniform regarding the fundamentals it would not be necessary to provide for minor differences. The liberal deputies attacked the Jesuit schools and voted their expulsion from France. The king turned appealingly to the Pope to help him by calling them out, and incurred the reproach of asking a foreign potentate to execute a law upon the soil of France. The government never recovered from this blow. It herewith lost that element in legal sanction which inheres in the power to enforce the law.

Likewise abortive were the movements to liberalize the suffrage. The government would not take the initiative in this subject, and two bills introduced by ordinary individual members came quickly to naught. Electoral reform was in everybody's mouth, but neither the ministry nor the legislature would act. At length the unenfranchised people took

matters into their own hands, and in the closing days of 1847 and the early days of 1848 instituted a series of political banquets for the discussion of these questions. It was the attempt to disperse these gatherings which brought on the clash and then the revolution of February, 1848.

The attempt of the Orleans Dynasty—with Roman Catholicism practically for a State Church, and the limitations on the freedom of thought and speech naturally connected therewith, and with the limited suffrage of the Charter—had failed to work out the system of the modern national state, with the ethical consciousness of the nation as the source of right and law and as furnishing the great compelling power over the minds and consciences and then the wills of individuals, which should give to modern law its ideal sanction, without which its physical sanction comes sooner or later to be regarded as pure brute force. The tenure of hereditary right to the royal office was not necessarily in conflict with this system. If the holders of this exalted position could persuade themselves always to regard it as an office conferred by the holders of the suffrage, to be held in a manner determined by these in their organic law, there would be no necessary inconsistency between such an executive and the modern system. In fact, such an executive may be seen at times to be very helpful, in the earlier periods of the modern national state, in overcoming excessive division of the political society into parties and at all times in protecting the states with exposed frontiers against invasion or attack. The hereditary executive is generally tempted, however, especially in Roman Catholic societies, to regard his tenure as derived from a divine source and as conferring an authority over men which is in no sense derived from men. Louis Philippe had not formulated any such claim, whatever his descendants might do; and his failure must not be attributed to that. It was his

earnest desire to be a popular king, a "citizen king"; but his favorite minister, Guizot, had his mind made up on the crucial questions,—the freedom of thought and expression in writing or speech, and the extent of the suffrage,—and it was anti-liberal in both respects and in all the necessary corollaries from both propositions, such as the freedom of instruction, etc. Once led back into the circle of thought from which the French political society had largely escaped through the Renaissance, the Reformation, and especially the Revolution, it would have been a comparatively easy thing to restore the system of the papacy and the Holy Roman Empire; and so, while the administration of Louis Philippe did not lay claim to any tenure, power, or authority as proceeding from a divine source or as conferred by divine authority, in distinction from the sovereignty of the nation in the creation of its organic law, it was leading toward the development of a system of thought and a tradition out of which these things would naturally spring. It was this conviction on the part of the best minds in the France of 1848 which persuaded them that their effort with the Orleanists to solve the problem of the modern national state had been a failure, and moved them to turn again to the elective, or republican, system of government through which to reach the goal of their labors.

In Great Britain, on the other hand, where the political society had freed itself from the influences of the papal system of thought and belief, the evolution of the national state, under the form of the constitutional, or limited, monarchy, proceeded apace, and anticipated any necessity for revolution by the Reform Bill of 1832, whereby the fifty-six "rotten boroughs" were deprived of one hundred and forty-three seats in the House of Commons, which were then assigned to the populous cities (such as Manchester, Birmingham, etc.), the suffrage in all of which was widely extended; the

Catholic Emancipation Bill, whereby the Roman Catholics were liberated from all political disabilities; the Municipal Corporations Act of 1835, whereby the ancient rights of local self-government (lost by the towns since the fourteenth century) were restored; and the repeal of the Corn Laws in 1846, whereby cheap grain was provided for the poor. Here was a clear demonstration that under other conditions than those prevailing in France the national system, with the hereditary executive authority prescribed by the constitution, is not only a possibility but is a highly developed and practical governmental organization.

CHAPTER XIII

THE DEVELOPMENT OF THE NATIONAL STATES SYSTEM IN EUROPE FROM THE REVOLUTION OF 1848 TO THE CONGRESS OF BERLIN IN 1878

It will be remembered that the chambers of the French legislature were in session when the street fights occurred between the military and the mob in connection with the efforts on the part of the government to disperse the banquets held in the open for discussing electoral reform. The crowd thus assembled and rudely organized invaded the Chamber of Deputies and, with the radical elements in this body, constituted a provisional government to take the place of the royal authority, composed of MM. Arago, Lamartine, Ledru-Rollin, and a few other noted or notorious characters. This group of men took up its abode in the Hôtel de Ville, proclaimed itself the government of the French Republic, assumed all governmental powers of every nature, prohibited the Senate from meeting, and dissolved the Chamber of Deputies. It then declared universal manhood suffrage of all citizens over twenty-one years of age to be the fundamental law of France, ordered elections for the members of the Chamber of Deputies to be held on the twenty-third day of the following April, and convoked the assembly of the elected delegates on the fourth day of the succeeding month.

The elections took place peacefully and in order, for the most part, and the majority of the elected were republicans in politics; that is, favored the elective tenure for the chief executive. The sovereignty of the state of France was now

organized in the convention of delegates, elected under the rule of universal manhood suffrage of all Frenchmen over twenty-one years of age, in May of 1848; and whatever it should declare to be law in France would have the sanction of legitimacy in source, as based upon the consciousness of right of the French nation and upon the interpretation of this consciousness by the nation's own selected and constituted organ. The national convention of delegates thus chosen and organized assumed the place of the Papacy or Empire in the preceding system, as the divinely appointed interpreter of the divine will in the government of man.

The provisional government now surrendered its powers into the hands of the convention and retired, and the convention proceeded to the formation of a government. It created an executive committee of five persons and vested it with the power and charged it with the duty of appointing ten responsible ministers, nine of them with portfolios—that is, as heads of executive, or administrative, departments—and one of them to be the presiding officer of the new legislature. In the midst of its labors, on the fifteenth of May, it was invaded by the mob, which was not satisfied with the conservative and common-sense way in which it was meeting its problem; and but for the assistance and support of the national guards it would have been dispersed and a more radical body installed in its place. It was a great shock to republicanism as it was, and its influence in the opposite direction was soon felt and then distinctly seen. The Royalists took heart, and from now on, as vacancies occurred, elected many members to the convention. The majority in the body, being still republican, voted not to admit them to seats, but did not, on the other hand, exclude the Bonapartists. A number of these were chosen, and their credentials issued to them in due form,—among them Louis Napoleon, son of the king of

Holland and claimant to the imperial succession. This person drew great attention to himself by addressing a communication to the presiding officer of the convention expressing regret at being the cause of any disturbance in that body and offering his resignation from it, saying that when France should become more calm he would return as a private citizen. During the summer the conflict between the Assembly and the idle workingmen of Paris and other cities and towns had made it necessary to consolidate the executive power into one strong hand, and the Assembly elected General Cavaignac as chief executive and declared martial law. His vigorous administration created that condition of quiet which Louis Napoleon professed to consider necessary and sufficient to his advent as a member of the body, and early in October he appeared as a delegate from the department of Yonne. From this moment we must trace the reaction in France culminating in the *coup* of December, 1852, and the partial restoration of the theological theory of the source and sanctity of law and government. Before this, however, we will do best to follow the advance made in the other states of Europe by the nationalistic theory in consequence of the movements of the spring of 1848 in France,—especially in the German Confederation, the Austro-Hungarian Empire, and Italy.

In the last days of March (1848) some five hundred men of prominence and note gathered together, of their own accord, at Frankfurt on the Main and resolved themselves into a provisional parliament, or convention, for the German Confederation. Their position was that of a party convention, and their acts were therefore binding on no one not choosing to recognize and obey them. It resolved to call a national constitutional convention of delegates elected by the people, citizens and residents within the states of the Confederation under the rule of universal manhood suffrage as then under-

stood in the revolutionary political philosophy of Europe. The diet, or legislature, of the Confederation recognized the authority of the Frankfurt convention to initiate this movement by providing for the elections thus suggested. They were held during the midspring of 1848, and the delegates then and thus chosen assembled on the eighteenth of May of that year at Frankfurt. The diet of the Confederation created by the Vienna acts of 1815 stepped aside and recognized this popular convention of delegates as a national sovereign state, with the authority to create government and law and give law its sanction for the German union which it might establish and organize.

This general convention then created a new provisional government for the union and made the archduke John of Austria its head, or president; and the diet of the Confederation disappeared. The convention continued to function as a constitution-making body until the middle of June, 1849, and was dispersed about that date by the government of the state of Württemberg, it having been adjourned to Stuttgart during the last months of its existence. Its fate was a grievous disappointment after a promising beginning; but it contained a valuable lesson which, as we shall see, was later understood and, in part at least, taken. From the point of view of the present the result was very natural. It was an effort to form a national popular state without paying sufficient, if any, regard to the physical frontiers and economic completeness and coherence of the territory to be brought into political and legal unity, to say nothing of the racial variety and opposition included therein.

Very nearly every state within the Confederation received a constitution of its own, however, of a more or less liberal character,—even some of the states of the Austro-Hungarian unity therein. The uprising was so violent in Austria, during

the autumn of 1848, that the city of Vienna fell into the hands of the revolvers and was held by them for a couple of weeks. The Emperor Ferdinand was able to retake it only by military force and after great bloodshed,—a result which so affected his mind that he abdicated in favor of his young son Francis Joseph, while Metternich fled to England. By the help of Russia, Francis Joseph succeeded in suppressing the Kossuth movement for the independence of Hungary in the summer of 1849, and the constitution granted to the archduchy of Austria in 1848 was practically abrogated at the close of the year 1851. The movement in the direction of national unity and national sovereignty within the geographical and economic unity of Europe bounded by the Carpathians and the Balkans, with Hungary for its center of organization, seemed to have come entirely to naught. It was not, however, quite so bad as that. While, indeed, nothing of positive importance seemed to have been effected, something of very high consequence from the point of view of our study came to pass. It was the total collapse of the Metternich system of the Holy Alliance, which, as we have seen, differed but little in principle from the theologico-political system of the Middle Ages. From the Revolution of 1848 onward the despotisms of Europe lost their ideal backing and rested upon a purely material basis, and they were consequently all doomed so soon as that should be fully realized.

In Italy, finally,—the geographical expression, as Metternich sneeringly termed it,—despite the internationalism of the papacy and the states'-rights doctrine of the Hapsburg princes located therein, the national state grew apace and became as firmly and permanently established as in Britain and France. The Mazzini party of "Young Italy" had made great headway during the years immediately preceding 1848 ;

but it had no existing government to lean fully upon, being republican in principle. Therefore its sole friend among the established powers, the king of Sardinia, stood with it only up to the point of driving out the Hapsburg princes, seeking to make himself the bearer of Italian nationalism, the center and heart of Italian national sovereignty. At this juncture, however, the current of historic events so turned as to bring the aims of these two national parties nearer together, for construction as well as destruction. Down to 1846 the Pope during the revolutionary period had sustained the Hapsburgs in Italy, as elsewhere. At that date a new Pope, Cardinal Mastai-Ferretti, was inducted into office. He sympathized with the policy of creating a national state in the Italian peninsula, but with the Sardinian view of it. He, however, veered far enough toward the Mazzini doctrines to consent to the formation of a national guard in Rome and the Romagna on occasion of disturbances requiring the use of soldiers for the protection of law and order. This step of Pio Nono offended the Austrian princes to the point that they moved their own troops into this territory, and this act on their part prompted Charles Albert, the Sardinian king, to espouse the cause of nationalism in Italy more actively. He declared war upon the Hapsburgs, and was sustained by revolts in their states throughout the peninsula. The results were not at first favorable to the Sardinian cause. The Hapsburg princes were upheld by the Austro-Hungarian emperor, the head of their house; and his armies were commanded by the really great general Johann Radetzky, count of Radetz, who, though now eighty-two years of age, won for his emperor the two decisive battles at Custoza and Novara, in July of 1848 and March of 1849, and drove the Sardinians back across the Ticino.

The king became so disheartened that he gave up the prob-

lem of Italian national unity and abdicated his throne in favor of his son Victor Emmanuel II, and the Pope fled from Rome to Gaeta; while the Hapsburg power was restored throughout the other parts of the peninsula. Apparently Sardinia and Garibaldi, with his "Young Italy" party much broken and depressed, were all that was left in 1850 of the at first so promising Italian national movement. But Victor Emmanuel II had some remarkable qualities: among them was the ability to wait and watch for the right opportunity. Events were, by the spring of the year 1849, beginning so to fashion themselves as to attract our attention toward France again.

When we broke off from the course of the revolution there to view briefly its effects in other lands, the historic character which was destined to control its development had just made his appearance in the National Assembly from the department of Yonne. This occurred during the last days of September, 1848. Already, five months before this, as we saw, the Assembly had found itself necessitated by the dissensions within its own body, and the conflicts between it and the idle men of the laboring class in Paris and other large towns, to depart from its theory of the directorial executive and in place of it to substitute temporarily the despotic rule of General Cavaignac. This was quickly effective in the restoration of order; and at the moment that Louis Napoleon entered the National Assembly as a member of it, Cavaignac's powers as chief of the executive government expired, and the question before the Assembly which held dominance over every other was whether to restore the directorate, as the permanent executive of the Republic, or to elect a president to that office. The outcome of the discussion, based on most enlightening experience, was a vote, by a decided majority, that the executive power of the Republic should be vested in

the hands of a president, elected by the voters for a single term of three years, as the permanent principle of the constitution. The date fixed for the election was the tenth day of the following December, and upon that occasion Louis Napoleon Bonaparte was chosen by an overwhelming majority.

When thoroughly looked into later, it was discovered that the Roman Catholic Church was the great factor in the promotion of this result, and that it was from the first the policy of the new president to restore the power and influence of the Church, and reorganize the army upon the old Napoleonic principles and with the old imperial spirit, and after these two fundamental things should have been accomplished to deal with the matter of his retiracy from power. During the first twelve months of his presidency Louis Napoleon had virtually changed the national guards into an imperial army, had escorted the Pope back to the Vatican under the protection of a French army corps and had set him up in his old historic quarters under the protection of a French garrison, had established a state of siege in Paris, had suspended the publication of a number of newspapers opposed to his government, had caused the arrest of some thirty-odd members of the legislative body, and had done away with the right of public meetings and a number of the other provisions of the Bill of Rights; and before two years of his term had passed, the Roman Catholic clergy were in firm control of primary and secondary education. He was now prepared to handle the question of his permanency in office. He and his ring-leaders chose the second of December, 1851, the forty-sixth anniversary of the brilliant victory of the battle of Austerlitz, for the *coup*. When the residents of Paris went into the streets on that morning, they found the city placarded with posters announcing the dissolution of the Assembly, the restoration of universal suffrage recently placed by the Assembly under

severe limitations, and the establishment of a state of siege in Paris and several of the adjacent departments, and convoking the French voters to their electoral meetings between the fourteenth and the twenty-first of the month for the choice of new members of the Assembly, under the rule of universal manhood suffrage, and for voting upon the question whether the president, Louis Napoleon Bonaparte, should continue in office for the next ten years, with the power to draw up a new constitution for the Republic.

The consternation was general over this veritable coup d'état, but every sign of opposition to it was crushed with an iron hand. The elections came off under the dead calm thus created. The alternatives were the total approval of the Napoleonic program or the abyss of chaos and darkness. It was carried by a majority of more than six millions of votes in less than eight, and the suppression of all opposition to it now took on the form of a popular mandate. On the fourteenth of January, 1852, the constitution thus authorized was promulgated. It conferred, practically, almost all governmental power—legislative, executive, and judicial—on the president by giving him an ordinance-making power equal to an unlimited power of legislation, and with a discretion in the execution of law which amounted practically to an absolute veto. The Senate was composed of the president's appointees, and the Chamber of Deputies was not furnished with any power to initiate bills, or amendments to or changes in bills, or even with any power to interpellate the executive.

Thus fitted out with governmental power and with the backing of the Church and the army, and with the example of Charlemagne and Napoleon I to direct and encourage him, Louis Napoleon required only a twelvemonth to bring about the restoration of the sham Napoleonic democracy on the real

grace-of-God foundation of Charles the Great and Leo III. In the autumn of 1852 he made a triumphal tour through the provinces, where his reception had been worked up and fully prepared by the clergy. Of course it was universally and in high degree enthusiastic; and when he returned to Paris, he announced in the *Moniteur* that he bore the popular mandate to consult the Senate upon the question whether the Napoleonic Empire, with the Napoleonic dynasty, should be restored. The Senate, constituted as it was, voted in the affirmative; and on November 21, 1852, the nation voted by a majority of about eight millions to approve the project. On December 2, 1852, Louis Napoleon mounted the throne of France as emperor under the title of "Napoleon III."

Few minds in Europe or the world recognized the full significance of what had happened. One could easily count upon the fingers of the two hands the voices of warning raised against the internationalism of the Empire as the restoration of the medieval Roman Christian state, with its doctrine of the divine source of sovereignty and the divinely appointed organs for the transmission of law to man; and they were for the most part discredited, as the prophets and promoters of disorder. From the point of view of the present, however, the unprejudiced student of modern history is rather compelled to admit that the new emperor and his advisers understood the nature of the task confronting them, and set about its accomplishment in the manner and with the plan that would have brought success, had success been possible in the age and with the surroundings.

The chief powers which at the moment stood in the way of the restoration by France of the medieval Christian empire were Russia and Austria-Hungary,—Russia because of her size, her geographical position on the Asiatic border, and her championship of Eastern Christianity, and Austria-

Hungary because of her position in the Holy Roman Empire of the German Nation, now a relic of the past, indeed, but lending the weight of historic tradition to any and all claims she might advance. The sobriquet of the "sick man of Europe" had been already fastened upon the Turkish Sultan, and the question of the partition of his domains was already mooted. The Czar Nicholas I proposed to Great Britain the conquest of Turkey in 1853; but Britain conceived that this would bring Russia too close to India, and sounded the new French emperor regarding an alliance for the protection of Turkey. Napoleon quickly understood the import of the situation and grasped the extended hand of the Empire of the Sea. The result was the Crimean War (1853-1856) and the Peace of Paris of 1856, whereby Russia was disposed of as the rival of Napoleonic France for the empire of Europe for some considerable time at least, the hold of Turkey in Europe was maintained under guaranty of the British, French, and Austro-Hungarian empires, and Russia was even compelled to surrender some territory, on her southwest frontier, to her enemies. The victors agreed to the opening of the Black Sea to commerce, but otherwise the cause of genuine nationalization in Europe received a blow from which it has never to this day recovered.

During this war the shrewd king of Italy saw his opportunity for winning the French emperor for his plan to unite Italy. He joined with Great Britain and France against Russia; and after the successful ending of the Crimean War he proposed to Napoleon the weakening of the latter's Austro-Hungarian rival for the empire of Europe by expelling the Hapsburg princes from their sovereignties in Italy and uniting these with Sardinia in a kingdom of Italy under the House of Savoy. For its aid in the accomplishment of this result the king was ready to cede to France the original possessions of

his house on the southwest slopes of the mountains separating France from Piedmont, namely, Savoy and Nice.

The emperor accepted the proposition, and in May of 1859 marched into Piedmont, at the head of a mighty army, proclaiming his intention of freeing the peninsula, from the Alps to the Adriatic, of the foreign rule of the Hapsburgs. In two great battles fought in June of this year, Magenta and Solferino, the work was done; and its final outcome was the union of all of the Italian peninsula, except Venice and the States of the Church, into the kingdom of Italy, under the lead of the House of Savoy, while the French national frontier on the southeast was rounded out by the annexation of Savoy and Nice to the Empire. Florence was made for the moment the capital of the new kingdom of Italy, and the French garrison remained in Rome to protect the Pope and the States of the Church—from whom?

It is not to be believed that the ridiculous nature of the situation escaped either of the two men who had brought it about. It was clear that His Holiness and the Romagna could not now be under any menace from anybody except the new kingdom of Italy, and that if they were in any danger from this power it was the French emperor, the man whom the Pope and the Church had made, who had brought the situation about. Napoleon could not permit such a view as this to become dominant in Europe or in France. He had too much need of the Pope and the Church in the realization of his future plans for that; so five years later we find His Majesty and the king of Italy entering into a compact termed the September Convention of 1864, according to the terms of which the French garrison should be gradually withdrawn from Rome and the Romagna, and the Italian king should assume the duty of protecting the Pope in his personal security and in the enjoyment of all of his rights, powers,

and privileges in Rome, the Romagna, and the kingdom of Italy as thus constituted.

In spite of his imperialistic aims and plans for the destruction or weakening of his Hapsburg rival for the control of Europe, Napoleon had been made the chief means for the establishment of the national state of Italy with political frontiers practically corresponding with its natural geographical boundaries, its economic necessities, and its ethnological character. The intent of history had won out—in this case almost completely—over the conscious purposes of men, and given the intelligent and conscientious student the guideposts to direct him properly in his further search for the law of development in the civilization of man.

At this juncture the kingdom of Prussia began quite distinctly its victorious march to the headship of a national Germany and presented to imperial France a new bulwark of defense against the further advance of that great power toward the East. As we know, the Hapsburg sovereignty had been the center of organization of the Holy Roman Empire of the German Nation, virtually from the close of the thirteenth century to the beginning of the nineteenth, and of the German Confederation from 1815 to 1866. But resting, as it did, upon the medieval-papal doctrine of the source of truth, sovereignty, and authority, it had not shown itself capable of leading the development of any form or species of the modern state. If we accept the principle of the divine source and sanction for law, it must be in connection with the rationalistic doctrine that the human reason is the interpreter of the divine, by virtue of its universal human quality, and not any special divinely appointed organ; otherwise we are floundering in the old medieval philosophy again. Such a rationalistic doctrine of interpretation was born, however, of the Protestant revolt against the Papal Church system, and

was politically represented in the geographico-economic unity of middle Europe by the state of Prussia. Already in the middle of the nineteenth century it covered some two thirds of that unity and had worked out a powerful, well-consolidated political and legal organization under the leadership of the most virile, vigorous, and capable royal house of Europe. It was now to be demonstrated that the moment had arrived when it should make a new advance toward the accomplishment of genuine nationalization in Europe. The occasion which gave rise to the issue was what is known in European history as the Schleswig-Holstein question. The territory designated by this title lay between the kingdom of Denmark and two states of the German Confederation, Hanover and Mecklenburg. It was governed by the king of Denmark as duke of Schleswig-Holstein. As king of Denmark he was overlord of himself as duke of Schleswig, but as duke of Holstein he was a member of the German Confederation in the sphere within which that government exercised jurisdiction. The tangle was subject to still further snarl in the fact that the king was forbidden to unite the two local governments into one by an old arrangement of the fifteenth century,—an arrangement which the Holsteiners and the Germans of Schleswig were determined to preserve. The natural position of the two dukedoms was either that of a state or states in the German union or of a part of the kingdom of Prussia. In 1848 the people of Holstein and the Germans of Schleswig revolted against the king of Denmark in either of his capacities as duke or king, and the troops of the German Confederation were ordered to march to their assistance. Great Britain and Russia came to the aid of the king; and this situation of threatening belligerency continued until 1852, when the so-called great powers of Europe, including Austria-Hungary and Prussia, entered into an arrange-

ment, called the London Protocol, guaranteeing the dukedoms to the king of Denmark (Ferdinand VII) and his heirs forever in their ducal capacity.

Thus strengthened the king issued a decree, in March of the year 1863, separating the two dukedoms and incorporating Schleswig into Denmark. The army of the German Confederation immediately invaded the dukedoms; and the kingdom of Prussia and the Austro-Hungarian Empire, in alliance with each other, made war against Denmark independently of the German Confederation, on the ground that Denmark had broken the arrangement of 1852 to which they in their independent capacities were parties. The war was short and decisive; and in the treaty of October 30, 1864, between Denmark, Austria-Hungary, and Prussia, the king of Denmark surrendered all of his rights, powers, and privileges in the dukedoms to the king of Prussia and the Austro-Hungarian emperor. The question of their ultimate disposition became now an issue between these two powers,—an issue whose solution brought in its train other changes of still greater importance in the evolution of European and world civilization.

It was the plan of Austria-Hungary to refer the matter to the diet of the Confederation with full power. With Austria-Hungary's preponderance in that body this would simply mean its decision by Austria-Hungary. Prussia was unwilling to accept this plan except with such changes in the constitution of this body as would give Prussia equal power and influence with Austria-Hungary therein, and, since that did not appear feasible, insisted on their annexation to Prussia. The first landing in the controversy was reached in August, 1865, in the Gastein Convention, according to the terms of which Prussia was permitted to annex Lauenburg permanently, hold the city of Kiel provisionally and the dukedom

of Schleswig in mandate, while Austria-Hungary should hold the dukedom of Holstein in mandate. During this same period the Prussian premier, Bismarck, had secured a treaty with Victor Emmanuel pledging the latter, in case of war between Prussia and Austria-Hungary, to act in alliance with Prussia, and, upon a victorious outcome of the same, promising the cession of Venice to the kingdom of Italy.

Austria-Hungary now proceeded, of its own motion and accord, to lay the matter before the diet of the Confederation, and Prussia countered by sending an army corps into Holstein. The diet, on motion of the Austro-Hungarian representation, voted to mobilize the troops of the Confederation except the contingents of both Prussia and Austria-Hungary, against which action, as an act of war by the Confederation on one of its members, the Prussian representatives protested, declaring that the diet had no further moral right to exist and proposing a new constitution of the German union excluding Austria-Hungary. The Prussian representatives declared further that the war about to be begun had for its aim the union of Germany and the establishment of a free national parliament. The war began in June, 1866, and terminated in less than two months with the cession of all the rights, powers, and privileges of Austria-Hungary in the dukedoms of Schleswig-Holstein to Prussia, which with Hanover, Hesse-Cassel, Frankfurt, and Nassau were immediately incorporated into Prussia. Austria-Hungary also agreed to the formation of a new German union, itself excluded therefrom. Venice had been ceded after Sadowa to Victor Emmanuel, during the course of the fighting; and in the Peace of Vienna, of October 3 following, the cession was confirmed, and the kingdom of Italy duly recognized by Austria-Hungary.

The North German Union was then formed under the guidance of Prussia, with a legislature of two Houses, one of

which was composed of members elected by universal manhood suffrage and distributed according to population, and with the king of Prussia as its president. The kingdoms of Bavaria and Württemberg and the grand duchy of Baden became entirely independent and sovereign states. Prussia thus made a great forward step in the fulfillment of her historic task of unifying and nationalizing politically the people resident within the third grand physical and economic division, bounded on the west by the Vosges and Ardennes mountains, on the north by the North Sea, on the south by the Alps, and on the east by the Carpathians and the Noric and Dinaric Alps.

Another result of this war and of the settlements at Prague and Vienna was the adjustment of the Austro-Hungarian Empire more nearly to its proper physical and economic boundaries as a quasi-national state on the road of advance toward the occupation of the national, geographical, and economic unity bounded on the north, northwest, and northeast by the arch of the Carpathians and on the south by the Balkans. Moreover, it was through the experiences of this struggle that the Austro-Hungarian Empire made some important progress in the popularizing of government and in the establishment of the fundamentals of individual liberty necessary to genuine nationalization.

And, finally, the national rounding out of the kingdom of Italy effected by the cession of Venice to the kingdom and the recognition of the kingdom by the Austro-Hungarian Empire as a free, independent, and sovereign state, completed in substance the nationalization politically of what we may call the fourth physical, economic division of continental Europe, namely, the Italian peninsula. There was left within this territorial unity not subject to the sovereignty of the Italian kingdom practically only the government of the Pope in Rome, sustained by the power of the French garrison.

In March of 1867, treaties of offensive and defensive alliance were announced as having been entered into between the North German Union and Baden, Bavaria, and Württemberg; and in May of 1868 a customs union was formed between these four states, and a customs parliament constituted for regulating the commercial relations between them. Their political union and national government and sovereignty were thus clearly and unmistakably presaged.

What now was Napoleonic France to do about it? Here was a new national state developing in the very heart of Europe, on the basis of the national consciousness of truth and right as the source and sanction of government and law, —a new state so self-conscious and so self-confident that the sovereign organizations in the other geographical unities directly east, southeast, and south of it were beginning to look to it for guidance and to rely upon it for aid. It presented the direct antithesis to the internationalism of the Empire both in fact and principle,—one which, if allowed to become consolidated, would very likely prove insurmountable. The French emperor recognized the menace which it offered to international expansion. As he and the imperialistic statesmen around his throne viewed it, there was just one thing to do, and that was to destroy the North German Union by war before Baden, Bavaria, and Württemberg should become politically united with it. There was no just cause for war in the actions of either party. They simply represented the two different types of civilization which have ruled the world, the substitution of the one of which for the other the history of the nineteenth century was now demanding. Contemplated from this point of view, however, the clash of systems was inevitable; and the occasion thereof was bound sooner or later to arise, whether it should appear as an irresistible obtrusion or as a consciously sought-for pretext. In

this case what occurred was the Spanish revolt of 1868 against Queen Isabella II and her flight to Paris, followed, after some months of provisional regency, by the offer of the crown of Spain to Prince Leopold of Hohenzollern-Sigmaringen, a relative of the king of Prussia (president of the North German Union), but so far removed from the main line of the family as to make it practically impossible that he or his descendants would ever wear the crown of Prussia. The imperial government of France immediately seized upon this opportunity to affront the Prussian king by demanding that he should forbid his relative to accept the election by the Spanish Cortes to the throne of Spain. This the king declined to do, but, probably under his influence, Prince Leopold declined apparently of his own accord the election. Napoleon could not, however, see so good an opportunity escape without some further attempt to improve it. He insisted that King William should engage never in the future to support the candidacy of a Hohenzollern for the Spanish crown; and the French ambassador to Prussia, Benedetti, sought out the king, who was taking his *Kur* in Ems, and rudely accosted him on a public promenade with this demand. The king referred him to the ministry in Berlin, as any constitutional executive would feel obliged to do, and passed on. This act of the king was represented in Paris as a gross insult to the French Empire, and orders went forth immediately for the mobilization of the imperial forces; and on July 19, 1870, the declaration of war by the French emperor on the North German Union was laid before the king and his ministry. The diet of the Union was in session, and it immediately voted with great unanimity all the required supplies. The states of Baden, Bavaria, and Württemberg whirled promptly into line; and in less than two months the great victories of Weissenburg, Wörth, Saarbrücken, Gravelotte, and Sedan shattered

the Napoleonic system into fragments, made His Imperial Majesty a prisoner in the hands of the Germans, and saw France prostrate at the feet of the new German national state, which it had hoped and endeavored to throttle in the weakness of infancy. The German armies marched on to Paris; occupied Versailles; established the German Empire by the union of the states of Baden, Bavaria, and Württemberg with the North German Union; proclaimed the king of Prussia German Emperor; and extorted from the convention of men professing to be a French government—of which Adolphe Thiers had been chosen chief executive—a treaty of which the main provision, as regards our study, was the cession of Alsace-Lorraine to the new national German Empire, thus extending the southwestern frontier of the new Germany to the line of the Vosges and the Ardennes,—the line of nature between the second and third physical unities of the continent of Europe.

The other highly important advance in the direction of genuine nationalization of political unities resulting from this war was the withdrawal of the French garrison from the city of Rome and its occupation by the troops of the king of Italy, after which this ancient city became the capital of the kingdom and thus practically completed the nationalization of the Italian state.

Three internal changes highly necessary to the real nationalization of the political system of continental Europe also resulted from this war. They were the abandonment of the Napoleonic imperial idea by the French state, and the recurrence to the republican form and doctrine; the further constitutionalizing of Germany; and the practical extinction of the temporal power of the Pope. All three of these fundamental changes were in the direct line of the creation of genuine national states, with all of the necessary elements

thereof. The first signified the complete change of basis regarding the source and sanctity of sovereignty and law,—a change which did away with the logical necessity for the continuous and universal extension of a consolidated power over the entire world. The second was the introduction into the heart of Europe of a form of government which would preserve local self-government at the same time that it would permit of the expansion of national political frontiers to any extent required by the lines of physical geography and economic relations. I do not think I can do better than quote here the passages from the message of President Grant to Congress on February 7, 1871, regarding the great significance of what had been accomplished in this respect.

The union of the states of Germany into a form of government similar in many respects to that of the American Union is an event which cannot fail to touch deeply the sympathies of the people of the United States. This union has been brought about by the long-continued persistent efforts of the people, with the deliberate approval of the governments and people of twenty-four of the German states through their regularly constituted representatives. In it the American people see an attempt to reproduce in Europe some of the best features of our own Constitution, with such modifications as the history and conditions of Germany seem to require. The local governments of the several members of the union are preserved, while the power conferred upon the chief imparts strength for the purpose of self-defense, without authority to enter upon wars of conquest and ambition.

The cherished aspiration for national unity which for ages has inspired the many millions of people speaking the same language and occupying a contiguous and compact territory, and unnaturally separated and divided by dynastic jealousies and the ambition of short-sighted rulers, has been attained; and Germany now contains a population of about thirty-four million, united, like our own, under one government for its relation with other powers, but

retaining in its several members the right and power of control of their local interests, habits, and institutions.

The bringing of great masses of thoughtful and free people under a single government must tend to make governments what alone they should be—the representatives of the will and the organization of the power of the people. The adoption in Europe of the American system of union under the control and direction of a free people, educated to self-restraint, cannot fail to extend popular institutions and to enlarge the peaceful influence of American ideas.

Finally, the third great international achievement consequent upon this war was the removal of the temporal power of the papacy from the heart of the Italian kingdom. This temporal power, as we know, was founded wholly and exclusively upon a doctrine of the source of sovereignty and the sanctity of law which squarely and flatly contradicted that of the nationalism of the kingdom of Italy and meant, therefore, eternal strife of the most dire and violent nature. Its removal, on the other hand, signified the attainment of an indispensable victory in the march of civilization.

Prior, thus, to the year 1872 Europe west of the Baltic, the Vistula, the Carpathians, the Tyrolese Alps, and the Adriatic had adjusted its political frontiers in tolerable approximation to its physical and economic boundaries. There were certain artificial miniature states still existing within this area,—states destined by nature to be united or federated with the large sovereignties occupying the unities in common with them marked out by these natural boundaries, such as Portugal and Andorra with Spain, Belgium with France, the Netherlands, Denmark, and Switzerland north of the Alpine crest with Germany, Switzerland south of the Alps and San Marino with Italy,—petty creations, based chiefly on ethnical differences (in greater or less degree of importance), but lacking entirely in geographical and economic features

necessary in the constitution of a genuine nation, and maintained, in some instances at least, by the diplomatic necessities, real or fancied, of certain great nations in their work of colonial expansion. But no one of these cases presented the real menace to the further course of genuine national development on the European continent; and every one of them would probably have found its solution as a natural consequence of a satisfactory treatment of the great question which is now seen approaching.

This question was the expulsion of the Osmanli from Europe, and the formation of national states in the districts held by them on both sides of the Balkans. In the year 1876 the Ottoman Empire in Europe occupied both banks of the lower Danube from the entrance of this river into the Black Sea westward of the entire course of the Pruth, across to the Carpathians from the source of this latter stream, and then along these mountains southward to the point where the Danube breaks through them just below Orsova; above that it held the south bank to the entrance of the Save, and then the south bank of the Save to its source in the ridges overlooking the Adriatic. From this line as its northern boundary it ruled over all the territory to the south of it, down to a line drawn from the head of the Gulf of Salonica across the Hellenic peninsula to the island of Corfu, which line constituted the northern boundary of the kingdom of Greece. Here, in connection with the kingdom of Hungary, on the one side, and of Greece, on the other, were two of the most perfect national unities, from the points of view of geography and economics, which the European continent had to present. Looking entirely away from all dynastic interests and from all diplomatic intrigue, and relegating racial distinctions to the subordinate place they should hold in the political evolution of genuine nations, the unprejudiced political scientist

would be likely to arrive at the conclusion that it was the trend and urge of the real historic movement of 1878 to transfer the center of gravity of the Austro-Hungarian Empire to Budapest, and to construct a federal union out of the kingdom of Hungary and all the Turkish provinces in Europe north of the Balkans,—in consequence of which change the Austro-Hungarian Empire should allow the kingdom of Bohemia and the archduchy of Austria to become states in the federal union of the German Empire; and that the Turkish provinces south of the Balkans should be annexed to or federated with the kingdom of Greece, to form a real national state with its capital at Constantinople. But however devoutly to be wished, however sincerely to be hoped, it was hardly to be expected that such an altruistic, enlightened, highly sagacious, and profoundly wise solution of this great question, so full of future portent, would recommend itself to the rulers, statesmen, and diplomatists of the day, among whom ranked supreme the wily Hebrew, Benjamin Disraeli. But before presenting the solution, we must state more clearly and with a little more detail the question, both in its nature and in the stages already reached in its evolution.

After the union of the twenty-five German states into the German Empire in consequence of the triumph of Prussian diplomacy and of German arms in the war against France, and the understanding, more or less comprehensive, between the emperors of Austria and Russia and the German emperor arrived at through the meeting of the three in Berlin in the year 1872, it seemed possible that some sort of agreement might be attained for united action on the part of middle and eastern Europe vis-à-vis Asia. As we have seen, this antithesis was at the moment acute in the hold of the Ottoman Empire over the territory in Europe south of the Save and the Danube. By repeated joint action on the part of the

great European powers—or some of them—against the Sultan at Constantinople or in joint influence over him, the Turkish rule in these territories had been considerably ameliorated, and the time had apparently come, in the last quarter of the nineteenth century, for the expulsion of the Mohammedan civilization from European soil. But after the removal of the Sultan's government what should take its place? As has been already demonstrated, Austria-Hungary was the natural successor to the territory north of the Balkans, with the surrender of Galicia northeast of the Carpathians to Russia, and of the archduchy and Bohemia to become states of the German Empire; while the kingdom of Greece was the natural claimant to the territory south of this line. It was to be presumed that the German Empire would be easily won for such a solution of the great question, but it was not at all certain that Austria-Hungary would consider the gains greater than the sacrifices in the changes and exchanges required; and when we come to Russia it is clearly seen that it would not at all bring the results which had been the aim of her diplomacy and military efforts for decades, namely, the acquisition of the Straits and Constantinople, an open, ice-free way to the sea, and the protectorate of Oriental Christianity. These conflicting considerations might have held the crisis in suspense indefinitely but for the seethings and revolts in the Ottoman Empire itself. Between the years 1874 and 1877 there occurred the revolts against the rule of the Sultan in the provinces of Bosnia, Herzegovina, and Bulgaria, participated in by inhabitants of the provinces of Serbia and Montenegro,—both of which districts were already practically independent,—and two palace revolutions in Constantinople, effecting changes of sultans. Germany was still busy adjusting and consolidating her new federal union; Austria-Hungary was unprepared to resort to arms; France

was struggling to recover from her collapse of 1870-1871; Italy was engaged in cementing her new-born unity and in finding a *modus vivendi* with the Vatican; and so Russia resolved in 1877 to go forward single-handed and alone. In less than twelve months her troops stood in Adrianople, within a scant hundred miles of Constantinople on the west, and in Kars and Erzerum on the east; and the occupation of Constantinople seemed to be only a question of a very few days. The Sultan, Abdul-Hamid II, now turned to Great Britain, praying for help against destruction; and the great empire proffered her intervention. This Russia declined; but she sought immediate peace with Turkey, while Britain, having purchased shares in the Suez Canal Corporation to a controlling number, and thus created a very important interest in the fate of Egypt and of Turkey, sent her fleet to the eastern Mediterranean and proclaimed herself the protector of the Ottoman Empire.

Driven thus to a hasty peace and adjustment with the Sultan, the Czar concluded the Treaty of San Stefano, whereby the domain of the Ottoman Empire in Europe was greatly curtailed, but Constantinople and the Straits still remained in the hands of the Sultan. It gave to Russia, however, bases of operation against Turkey so numerous and powerful that Great Britain, now thoroughly aroused to the danger to her Indian possessions of the conquest of Turkey by Russia, induced Germany, Austria-Hungary, France, and Italy to join with her in a demand upon Russia to lay the Treaty of San Stefano, for revision, before a congress of representatives of the powers of Europe, to be assembled in Berlin three months later. Russia dared not resist a so formidable demand, and presented herself promptly in this august assembly, prepared to accept obediently whatever curtailments it might choose to lay upon the results of her hard-won victories, but hoping

that Germany, at least, would stand by her against excessive spoliation by other powers.

It was the privilege of the author of this book to be present in Berlin during the entire session of this congress and to be in daily communication with a number of its most prominent members, among whom there was one in particular who had been, some time before, a fellow student in the university at Berlin, attending the same courses of instruction and taking part in the same seminars. At the date of the Congress this man was a very high official of the foreign office in the Wilhelmstrasse and therefore *au fait* to all that was passing. With him especially the author watched and discussed the movement and trend of events in the Congress, and was at that early day filled with amazement bordering on consternation at what appeared, even to his immature vision, to be the frittering away of one of the greatest opportunities of human history for the peaceful advance of civilization, and instead thereof the sowing of the seeds of dissension and future conflict. It was, above all else, most enlightening to watch the diplomatic game of the British premier with the German chancellor. At times it became almost amusing,—if one may be pardoned for employing such terms concerning so serious subjects.

The characters of these two great leaders of men were about as different as character can be conceived. The Jew was about the most perfect combination of courtesy and cunning which human biography has to present, while the Junker, on the other hand, was the perfect personification of physical force and straightforward honesty. The results of the play were the most telling demonstration of the superiority of the former qualities over the latter, both originally and by cultivation, when they exist in such perfection and are employed with such complete command, never-failing pa-

tience, and exact balance. The way in which this compound of grand seigneur and Mephisto could dangle before the eyes of his colleagues one thing as the object of his policy while really following an entirely different purpose,—so different as to be sometimes hardly short of contradictory,—was the most skillful and clever bit of political jugglery imaginable. While in this particular case he was professing to be laboring sincerely and impartially to settle the Balkan question, or situation, and making everybody believe that he was sincere and even unselfish in his efforts, he was really and—one cannot help believing—consciously bringing about conditions which would prevent any natural solution of this great problem and keep Europe in unrest and in ever-growing and increasing irritation until finally a world conflict would be precipitated, out of which the British Empire alone would emerge greater as a world power than ever, and more secure against every other. That he did his work well and successfully no man who lives today can doubt. The strange thing is that so few at that day divined his purpose and so many rendered him obedience, almost homage.

The power which Great Britain feared most at that juncture was Russia, with its European territory equal to that of all the other states of Europe put together, inhabited by one hundred million subjects, and its Asiatic territory covering the northern half of that continent and giving it a base of operations not only against all of the other states of that great division of the world but also against Britain's Indian empire and Australia. To allow the Romanoff empire to absorb the Ottoman lands, in whole or in any considerable part, would put it in a position to flank Arabia, Persia, and India. Turkey must therefore be defended against absorption by Russia. To accomplish this, however, Great Britain must have allies against Russia. Naturally, the first power to be

brought into this relation was Austria-Hungary, and the Hapsburg empire alone might have sufficed. It might also have been won alone, had Great Britain been ready to assure it of all the Turkish domain in Europe between the Save-Danube line and the Balkans. But it was not the policy of the wily British statesman to make any existing great power any stronger. He could not, therefore, afford to advance to Austria-Hungary any such attractive proposition. He must dicker with this party and beat him down to his lowest price and make him just enough return to prevent him from being won over by Russia, with whose Czar the Hapsburg emperor had, since 1872, been upon quite friendly terms. He must for this reason have, in addition to Austria-Hungary, another of the great powers as a partner in his effort to restrain Russia. This power could be no other than Germany. France would, no doubt, have been preferred; but France was at the moment too weak to be of any important service. The question of practical politics was reduced simply to the consideration of what Disraeli had to offer Germany, in order to detach the Hohenzollern emperor from the long friendship of his dynasty for the Czars (reaching back to the beginning of the century), which would not so strengthen *that* power as to make it a danger to the British Empire.

The author asked this question of one standing very near to the German chancellor when his infatuation for the crafty British premier began to be manifest; and the answer received was that he had made the chancellor believe that an alliance between Germany and Great Britain would be Germany's reward for standing really with Britain against Russia in the great crisis, and that formulas of the arrangement would be so phrased as to make Russia feel that it owed to German influence over Great Britain and Austria-Hungary its escape from still more humiliating conditions than it was

in fact made to suffer. In fact they *were* so phrased that the chancellor himself apparently believed that he stood in the relation of the honest broker to all parties. Eight or ten years later the author asked this same person whether the hoped-for understanding between Great Britain and Germany had come to realization or had made any advance toward it. He replied, with a knowing smile, "Salisbury says it is not yet opportune." We of today know that it never became opportune. Perhaps it might not be worthy of science to entertain the suspicion that, by one of the parties at least, it was never intended that it should.

The next problem for the Jew was to satisfy Austria-Hungary,—satisfy this state in such a way, however, as not really to strengthen it, or to excite in it the ambition to succeed to the estate of the "sick man of Europe," and to give such a form to what was acknowledged as would make it a seed of future weakness and misfortune.

The crafty premier was equal to this task also,—fully equal. He invented for the two Turkish provinces of Bosnia and Herzegovina a form of rule, by the Austro-Hungarian emperor, called a mandate; that is, the emperor was to govern here as the agent of the European powers represented in the Congress.

Almost anybody could have forecast from the outset that here was a seething pot of misunderstanding. It left every question of the permanent condition of these provinces unsettled. Whether they should be absorbed by or annexed to Austria-Hungary, as a part of either Austria or Hungary; or constituted a state on an equal footing with Austria or Hungary, making thus a tripartite system of this empire instead of a bipartite; or held in the condition of mandated provinces until made a sovereign and independent state; or should be connected with some other state as a part thereof,—no

one of these questions was answered by the settlement of 1878 at Berlin, but the whole matter was left a first-class Pandora's box out of which anything could be later extracted, to accord with the wishes of any puller clever enough to manipulate the strings in the manner intended by its inventor and fashioned by its inventor to allow.

The third problem for His Excellency was the settlement with the aspirations of Greece, and that too in a way which would not create a strong maritime power in the Levant. Naturally the kingdom of Greece should have been extended to the Balkans on the north, including Constantinople and the entire territory from the Ægean to the Adriatic. But Disraeli did not wish to raise up any such controlling power in the eastern Mediterranean; so he assumed the protectorate of Turkey in the Greek peninsula north of about parallel forty,—the latitude of the entrance to the Gulf of Salonica. The territory lying between this line and the Balkans—Thessaly—was therefore maintained as a Turkish province backed up by Great Britain as Turkey's protector in Europe as well as Asia, the purpose of which disposition was quite manifestly to prevent Greece from becoming, or aspiring to become, a second (eastern) Rome, threatening to the British power in India.

Fourth and finally, the British premier effected the erection of the other Turkish provinces in Europe into the states of Rumania, Bulgaria, Serbia, and Montenegro, with the separation of eastern Bulgaria from middle and western Bulgaria and its formation into an independent province governed by the Sultan through a Christian prince, and the reservation of what was termed Turkish suzerainty over middle and western Bulgaria.

How such arrangements stood so long as they did is the matter of wonder. It is very difficult to believe that Benjamin

Disraeli ever thought that they could or ever intended that they should. From the point of view of the political scientist it was a complete miscarriage from the first; and to the man who has an ear for the tread and an eye for the trend of history, it was a retreating figure,—a turning of the path of history, as revealed by the constant succession of events since 1792, back upon itself. By the interference of Great Britain under the lead of its crafty minister, the development of the genuine national state in continental Europe was put back a century, at the least, and the diplomatic policy of Balkanizing the world—except the British Empire—was distinctly entered on.

It was rumored in Berlin, at the time, that the German emperor, William I, was conscious of all these dangers to Europe's continental system and hesitated to sanction the arrangements effected by the Congress. It was said that he called his chancellor's attention especially to the danger to Germany of incurring the displeasure of the Czar, and that not until Von Moltke had joined his voice with that of Bismarck, and both had threatened to retire from office unless His Majesty should attach his signature to the protocol, was the emperor's opposition overcome. We of today know that he had grave reason on his side and that the natural result of the acts of the Congress of Berlin of 1878 has been the so-called treaty of peace of Versailles of 1918. How the latter grew out of the former, and what has been the effect of this evolution upon the sanctity of law as based on national opinion of right and wrong, will be the subject of our next chapter.

CHAPTER XIV

NATIONAL DEVELOPMENT IN EUROPE FROM 1878 TO 1914

The mistake made by the German chancellor in following the lead of the British premier made itself quickly felt in an immediately evident coolness on the part of the Czar toward the German emperor, and in the birth and growth of the idea of a great Slavic nation in the east of Europe, with Russia as its political head and leader. This was the beginning of a very serious movement in national evolution which was destined to have wide-reaching results. Down to this moment Russia had been the advance post of Europe against Asia and had been sustained from behind by the Teutonic and quasi-Teutonic powers of Europe. It was, as we know, through such a relation that European civilization had made its way eastward from the age of Rurik and Charlemagne. Now this vast power, Russia, was to become Slavic in spirit and make itself—or seek to make itself—the political nucleus for all the Slavic tribes in middle and eastern Europe, and their political leader in a new universal advance against the Teutonic and Romanic states of that continent. This was the modern reappearance of the “yellow peril” in central Europe, —just this and nothing less. And it was mightily promoted by Bismarck’s attitude in the Balkan question at the Congress of 1878 in Berlin. The danger to the civilization of Europe, upon the new basis of its organization by nations, of this changed policy on the part of Russia was pointed out to the German emperor, William I, by his Cabinet chief, Albedyll;

and the old monarch made the clever and noted reply that the prince was the only man in the empire who could juggle with five balls, of which two at least must always be in the air, and that in the existing condition of Europe he was obliged to have such a man. The five balls were Germany, Austria-Hungary, Italy, Russia, and Rumania. Those constantly in the air were Russia and Rumania, and the additional one sometimes in the air was Italy. There were men in Europe in the first half of the eighties who favored war in order to settle things more firmly and distinctly, but the German chancellor was not one of them. He resisted every argument of the military men in favor of such a war, or any war, and did so successfully; and the emperor followed his advice closely in all matters which might have led to the opening of hostilities. One often wonders, in these latter days, if it ever occurred to the old hero that all five of these balls would ever be in the air at the same time and that not one of them could be relied on to be always in the hand. This is the picture to which we of the present have been treated.

We have first-class evidence that the chancellor became conscious that Russia was growing farther and farther away from Germany in consequence of the part played by the latter at San Stefano and Berlin. Says Emperor William II, in his book "*Ereignisse und Gestalten, 1878-1918*":

My grandfather, Emperor William I, and the chancellor, in the summer of 1886, after the last meeting between them and the emperor Francis Joseph at Bad Gastein, dispatched me to Brest-Litovsk to seek the Czar, Alexander III,—who was attending the maneuvers of his troops at that place, rather closer to the German frontier than was necessary, and nearer than was comfortable to the government at Berlin,—and to offer to the Czar the consent of the imperial government to the occupation of the Dardanelles and Constantinople by Russia.

The reply of Alexander—a very blunt man, to put it mildly—is, as reported by the then Prince William, equally good evidence that the alienation between the two powers had already proceeded a goodly stretch. He said quite haughtily that “when he wanted Constantinople he would take it in his own time, and did not require the consent or approval of Prince Bismarck therefor.”

Had the Czar treated this advance otherwise, however, and taken possession of Constantinople, while it might have restored the old friendly relations between Germany and Russia and have halted the development of Panslavism, and even have enabled Europe to resume its march Asiawards, still it is difficult to see that all this would have helped greatly the solution of the fundamental question of the source and sanction of law in the national consciousness of right and in the national power for its enforcement. That, as has been demonstrated, required the extension of the kingdom of Greece northward to the Balkans, and the possession of Constantinople and the Straits by that state, which would thereby become a national state from the points of view of all the necessary elements in the construction of such an organization,—the geographical, the economic, and the ethnological; and also required the formation of another national state in the middle and lower Danubian lands, with the Carpathians and the Balkans as its general boundaries. The European statesmen and rulers were not ready for any such radical dealing with the great problem of the organization of national states. They were too busy appropriating the fragments of the Ottoman Empire in Europe, too much engaged in the destruction of what remained of Spain’s colonial empire, and too much concerned about the Austro-Hungarian bipartite system.

During the nineteen years of Bismarck’s leadership in the

creation and consolidation of the national German state in central Europe, Germany did not follow the example of Great Britain, Russia, and France in respect to the founding and developing of a colonial system with the chief purpose of having control of vast productions of raw material and of vast markets for the disposal of manufactured articles. What acquisitions of extra-European territory had been made by Germany previous to this period, or were made during this period, were considered as being for the object of securing stations for naval or commercial purposes, or with the aim of getting hold of certain spots of territory to exchange for other spots, more nearly connected with European Germany but in the hands of other powers, chiefly Great Britain. There was, for example, one bit of land in the North Sea, near to the German shore and commanding the ports of Hamburg and Bremen, the possession of which by the German Empire was very necessary in the development of the national unity of Germany. It was the island of Helgoland. But Prince Bismarck was so little concerned about anything outside of the Continental frontiers of the empire that this much-to-be-desired national acquisition was not made during the long period of his chancellorship but in the term of his successor, General von Caprivi, and was then criticized sharply because of having been effected by the exchange of Zanzibar with Great Britain for it, despite the fact that this was the very purpose for which the prince put value on the holding of foreign territory. The acquisition of Helgoland was, however, a step (a very important step) in the right direction for consolidating the national unity of the German state,—about the last and only step in this direction which the history of Europe has to record after the nation-building movements in Germany and Italy of the first half of the eighth decade of the last century had reached a tolerable conclusion; that is,

after Great Britain began the work of Balkanizing the European continent at the Congress of Berlin.

Before the first five years of the new century had passed, the development of the policy of the organization of sovereignty (that is, the source of law) on the foundation of genuine nations—geographic, economic, and ethnologic—had been completely halted by the three great colonial empires, Great Britain, Russia, and France; and these three had gotten together in an understanding that no other states of this world should be admitted to this partnership except as very minor members.

The weak spots in the "Entente," which quickly revealed themselves, were the relation of Great Britain to Russia in Asia and to France on the south coast of the Mediterranean, which situations Britain knew how to meet and to treat by the admission of Japan and Italy to the firm. With the former Russia was held in check in Asia, and with the latter France was slowed down in Africa.

Just at this moment appeared a new, highly organized great power on the scene, which was destined in less than twenty years thereafter to play a chief rôle (if not *the* chief rôle) in pulling down the developing national system of Europe and in introducing race secession in its place,—the United States of America. Since their secession from the British Empire, a century and a quarter before, they had had a rich experience in the creation of a genuine, great national state. In two successful wars against the motherland they had won and maintained their complete independence and sovereignty, upon the basis of which they had established the sanctity of the new law to which they became subject. By another war they had extended their territory until they had reached their natural boundaries in great, almost complete, fullness; and by another they had settled the question

—apparently for all time—of nationalism as the source of authority over and legal compulsion against any other grouping of men, whether more or less extended.

This national American union had a fundamental principle of its foreign policy called the Monroe Doctrine, which forbade the occupation of any territory in either of the American continents, after the enunciation of this doctrine in the early part of the nineteenth century, by any power not already an American state. The reverse of this was, of course, the renunciation by the United States of America of the exercise of any such right, authority, or power (or perhaps the more correct term would be "interference") in Europe, Asia, or Africa. Whether this self-denying side of the proposition was as firmly and universally held by the people of this North American union or by the government thereof, at any time during their history, as the positive side of the doctrine, is very questionable, to say the least. If, however, such had ever been the case, that date had vanished before the end of the last century; and the last two years of that era witnessed the military and naval power of this professedly pacifist nation taking part in the movement for carving up the remains of the Spanish colonial empire, not only in the American waters but also in the Asiatic area of the Pacific Ocean.

This struggle brought to the front in the United States of America two men of great physical courage and towering ambition (and anything but pacifists), George Dewey and Theodore Roosevelt,—both of them intimate acquaintances of my own, and the latter my own pupil in the subjects of constitutional and international law. I early marked them both as stormy natures, men without great tact but entirely irresistible, rarely perfectly exact about anything but so self-confident, so trustful of themselves about everything, as to

make absolute certainty out of any fair degree of verity, and even give some appearance of truth to quite evident dubiety, —just the men to take the lead in raw political societies and drag the great new nation of the Western Hemisphere into new and untried paths. What they did, expressed in a single sentence, was to act the chief part in starting the transformation of the great nation of the western world into a colonial empire, with all that this involves in the way of poisoning the new national source of authority and corrupting the sanctity of law founded thereon. The preparation was then begun for a consummation which hardly any citizen of this great national union in the year 1897 dreamed of, but which we who lived twenty years later saw accomplished on a scale, and with means, purposes, and results, that have startled the whole world, ourselves included. Where it will end would require more wisdom than that of a prophet of old to predict. We certainly claim title to no such prescience.

Such was the sensitive balance of power on which the peace of the world rested in the year 1907, when Austria-Hungary resolved to annex Bosnia-Herzegovina to the empire. It was in the early spring of this year that the author of these lines, then occupant of the Roosevelt professorship in the university at Berlin, was summoned by the Austro-Hungarian authorities to go to Vienna and expound to the juristic society, or bar association, of the empire the Federal system of government of the United States of America. Lending immediate ear to the call and while explaining the subject requested, he frankly stated to an audience consisting of hundreds of the most eminent jurists and lawyers of the empire, together with the ministers and officers of the imperial and royal governments, that an American political scientist and constitutional lawyer of the school of Abraham Lincoln and Salmon P. Chase could not help wondering why no movement was ap-

parent toward the formation of a national state, with a federal system of government, in the middle and lower valley of the Danube, bounded by the arch of the Carpathians on the northwest, north, and northeast and by the Balkans on the south,—that there was no more perfect national unit from the geographical and economic points of view in all Europe. I remember distinctly with what perfect silence and serious mien this suggestion was received. In fact, I was made to feel by the attitude of all present that the remark was, if not unwelcome, at least unexpected. I do not believe that at the moment such a thing had been really contemplated by a half-dozen responsible Austro-Hungarian statesmen, jurists, or lawyers. It required something much more evident and pressing than the speculations of a foreign professor of political philosophy, something much more practical and inside the realm of fact, to stir up the indolent, pleasure-loving Austro-Hungarian to a realization of what the march of history was demanding.

In one year and four months from that date, however, this required something came to pass. It was the revolution of the "Young Turks," of July, 1908, a movement which was thought throughout Europe to signify the establishment of constitutional government in the Ottoman Empire, and with it the reestablishment of Turkish sovereignty over the European territories lost by the war with Russia of 1877-1878. It will be remembered that of these Bulgaria and Bosnia-Herzegovina were still in the beginning of 1908 under the nominal suzerainty of the Sultan,—whatever that might mean,—although the former was really an independent kingdom, and the latter a province of the Austro-Hungarian Empire. Laboring under the impression that the revolutionary government in Turkey was preparing to make that sovereignty real, the Bulgarian and Austro-Hungarian govern-

ments on the selfsame day, October 5, 1908, renounced the overlordship of the Porte over these territories in toto.

But this relation between the Ottoman government and these territories had been created, as we know, by a provision of the Treaty of San Stefano as revised and guaranteed by the Congress of Berlin,—that is, as guaranteed by all of the great European powers,—and it remained now to be seen whether these powers would uphold that provision in support of the new Turkish government. What the small states would do was of little consequence, except as they should be found to be acting as the agents, or employed as the scapegoats, of the great powers. The facts with which we have to deal in the interpretation of the situation were as follows. Austria-Hungary paid the Turkish government some ten millions of dollars indemnity for the latter's acquiescence in the incorporation, both nominal and actual, of Bosnia-Herzegovina in the realm of the former; and the authorities at Constantinople declared themselves entirely satisfied. The British government hesitated and vacillated, and seemed to be embarrassed by the difficulty of making up its mind whether it was more likely that the new Turkish régime would look to England, the so-called Mother of Parliaments, as its model rather than to Germany (to which the deposed Sultan, Abdul-Hamid, had shown greater friendship); while at the same time it was, and for a number of years had been, dickering with France over Morocco and Egypt and with Russia regarding Persia, with the result of having become involved in somewhat embarrassing engagements in both directions. As a third controlling fact we have to take into consideration that for a number of years before the defeat of Russia by Japan, and the consequent volte-face made by the former against Europe, France had been intriguing with Spain for the seizure and partition of Morocco, and that when Great

Britain became aware of this movement and manifested displeasure in regard to it, France quieted the great empire by offering to withdraw from the joint control with it of the Egyptian finances, leaving this matter solely to the Downing Street government, and also by agreeing to set its approval upon the acquisition by the empire of all the territory lying between Egypt and Persia. It was not to be expected that the other European powers would keep quiet under such wholesale and reckless disposition of the earth's surface and inhabitants; and Germany was encouraged by this evident feeling to ask for an assembly of these powers with those concerned in carrying out this stupendous game of grab, to consider the question of the appropriation of these vast territories and all important matters connected therewith. This assembly was the now-famous Congress of Algeciras of 1906, which ordained the independence and integrity of Morocco under its own sultan, accorded certain very limited police powers to France, Switzerland, and Spain therein, and decreed the open door to trade between Morocco and all other countries upon a free and equal footing,—a triumph of German diplomacy which placed a still greater strain on the relations between France and Germany and drew France and Great Britain closer together.

Fourthly, during all these years, Great Britain was improving the condition produced by the weakness of Russia after the defeat of the latter by Japan and the Nihilist revolution, to make India secure against any future movements of the great Romanoff empire. The government at London entered into an arrangement with the St. Petersburg autocracy for the partition of Persia into what they called spheres of influence, Great Britain taking the southern half, which included the Persian Gulf, and Russia the northern, which still left the latter without an ice-free port, the year round, to the

open sea. The all-important result, thus, of the Russian misfortunes of the first five years of the twentieth century was the return of Russia upon Europe in search of such an exit ; in other words, the revival of its traditional policy of the conquest of Constantinople, which after long deliberation appeared to British diplomacy in 1906 preferable to the acquisition by Russia of a seaport on the Pacific Ocean or on the Persian Gulf or by way of the Armenian plateau on the northeast corner of the Mediterranean. The British statesmen assumed that the possession of Constantinople and the straits connecting this city with the Black Sea and the Mediterranean would, while giving Russia the coveted seaport in warm water, still keep it away from India,—would, in fact, keep it subject to British maritime power through the possession by Britain of both outlets of the Mediterranean to the open sea, and would make Russia the definite, constant enemy of Austria-Hungary and Germany. From the moment of the conclusion of the agreement of 1907 between Great Britain and Russia the thought began to develop in the minds of the leaders of both of these world-grabbing empires that “the way to Constantinople lay through Berlin.” It required a few years more, however, for the thought to become general enough to serve as a basis of international action in Europe. At the moment when Austria-Hungary announced the final incorporation of Bosnia-Herzegovina into the empire, Great Britain had not made up its mind clearly whether or not it should give its unreserved support to Russia as against Austria-Hungary and Germany, whether or not it might not need the help of these two powers at some time against Russia, especially after the latter should have become fixed in Constantinople. The great empire of western Europe therefore restrained itself from manifesting resentment against Austria-Hungary for the act of October 5, 1908.

It was from the little kingdom of Serbia that the howl of rage and the tones of expostulation went up; and when they began to tremble and weaken, it was Russia that came to the rescue and gave Serbia the backing necessary to make Austria-Hungary understand that instead of any further advance down the Danube it would require all its strength to hold its ground. It was entirely clear to anyone who knew anything about the diplomacy of eastern Europe that it was the policy of the Czar's government to hold Bosnia-Herzegovina under the suzerainty of the Sultan until Russia should have occupied Constantinople. In fact, so threatening did the situation become that Germany felt obliged to call a halt and even "rattle its saber" ominously in order to make Russia give ear to its warning.

Thus, before the beginning of the year 1910 it had become distinctly manifest that Great Britain, Russia, and France, the three great colonial empires of the world, had advanced far toward the conclusion not to allow Austria-Hungary to unite the little states on the south bank of the Danube and north of the Balkans with itself in a federal union as a first step toward the development, in this geographic and economic unity, of a national sovereignty for the source of its law, whereby the legitimacy of its origin would confer, or conspire to confer, that compelling power over the conscience and will which carries obedience to the command thus originating and which we term its sanctity. It does not appear to the genuine historical student that these great powers recognized at all the seriousness of what they were doing, namely, preparing the ground for, and sowing the seed of, war and anarchy, instead of giving to the states of Europe the boundaries and the organization intended by nature and history, and solving thereby the problem of the legitimacy and sanctity of the law required by the change of system

from the universal Christian state, with its divine source and sanctity for law conveyed to man by divinely appointed agents,—from this system of the Middle Ages to that of national states based upon the several geographic, economic, and ethnical unities as indicated by nature and evolved through history. During the last half of the first decade of the twentieth century these three mighty empires were driving forward rapidly and irresistibly upon this destructive course, and in 1910 it seemed to the intelligent observer but a question of days when the catastrophe might be precipitated.

There was, however, one more thing to be accomplished before the shrewd diplomatists of Great Britain felt that they could risk the plunge, and that was the detachment of Italy from the Triple Alliance. This does not seem to have been a very difficult problem to British diplomacy. Italy had fairly accomplished her national unity from the geographic and economic points of view, as well as the ethnical; and it was in the air, around 1910, that some great power was hinting to her that the time had come, or was at least near, when she should enter upon the rôle of mistress of the Mediterranean and acquire part of northern Africa as a colony. It has long been understood that it was the British who put this thought into the Italian mind. They knew well enough that, while the title of "chief Mediterranean power" was flattering to the ears of the Italians, it really was little more than an empty phrase with Great Britain in possession of both outlets to the open sea, and its vast navy harbored therein. Italy would be obliged to look to Great Britain to protect her in possession of this large territory against Turkey, France, and Spain; and therefore Great Britain's friends must be Italy's friends and Great Britain's enemies Italy's enemies, while at the same time Italy's strength would be largely preoccupied in holding and controlling its new

colonial territory. Italy, however, fell a prey to the seduction; and in 1912 her occupation of Tripoli was accomplished, and with it the certainty that Italy would not remain loyal to her allies of the Triple Alliance—Germany and Austria-Hungary—in a struggle between them and Great Britain was practically established.

During this same period Russia was organizing the Balkan League for use against both Austria-Hungary and Turkey, and for aiding herself in her march to Constantinople. So encouraging had the situation become, by the end of the year 1912, to the execution of this plan that in the early days of 1913 the Russian troops were observed moving from the Caucasus toward Armenia and by way of the Armenian plateau in the direction of Constantinople. This maneuver signified the seizure of a broad belt of Turkish territory reaching from Transcaucasia to the northeast corner of the Mediterranean. But this would bring Russia too near to Syria, Babylonia, and Mesopotamia for Great Britain's comfort, and might prevent the connection of Egypt with Persia by the British. Russia was compelled by British opposition to draw back and to look only to the Danubian way to reach Constantinople,—the way over the Austro-Hungarian Empire,—and, as this state was backed by the German Empire, over this latter country. For this, however, a little more preparation was necessary,—a little more delay therefore,—a little closer cementing of the bonds between the three great colonial empires, and a little better working understanding with Russia's rival on the north-Asiatic coast of the Pacific, Japan. About five years, it was calculated, would be necessary for the destruction of the existing organization of central Europe.

Great Britain and France were intriguing to make their grip upon that part of the Turkish Empire between Egypt

and Persia fixed and certain, and that of France—despite the recent agreement at Algeciras—upon Morocco equally so; while Russia was strengthening and cementing the Balkan League, and adjusting it in every direction to its assigned task of chief organ of dismemberment of the two great states east and west of it.

In the spring and summer of 1912 the Balkan powers in league had driven the Turks back to their last line of defense before Constantinople and were preparing to turn upon Austria-Hungary, when the defection of Bulgaria ruptured the league of the Balkan states and saved the Hapsburg empire, for the moment, from the threatened destruction.

During this same period the government of this empire was carefully reflecting upon the problem of its reorganization upon the basis of a federal system somewhat similar to that of the United States of America. The author of these lines, who had briefly explained that system at Vienna in the spring of 1907, was called in the spring of 1914 to return to Vienna for the purpose of expounding in more detail the constitutional law of this great model of federal government for the imitation of the Danubian lands, and was preparing to take this journey in the summer of 1914, in order to enter upon this duty at Vienna, Budapest, or wherever else within the empire it might please the old emperor, Francis Joseph, and his minister of education to send him. The call was expressed in such serious and earnest phrasing as to manifest a consciousness of the important and urgent nature of the work; and it was continued and repeated even after the assassination of the crown prince and princess at Serajevo had made it apparent that men had lost their reason and that physical force was now to be the arbiter.

CHAPTER XV

THE WORLD WAR, THE VERSAILLES PACT, AND THE HALT IN THE HISTORIC MOVEMENT FOR THE FOR- MATION OF GENUINE NATIONS AS THE BASIS FOR A NEW SANCTITY OF LAW

It is not the purpose of this work to undertake the fixing of the responsibility for the origin of this war upon any of the parties engaged therein, or to trace its evolution out of a matter of apparently local concern between two powers into a general European war and then into a world war, or to discuss the methods employed by any of the belligerents in its prosecution, or even to venture an opinion upon the conscientiousness of the conscious aims of any of them. The problem of this book would not be solved or satisfied by finding an answer to any or all of such questions. Their consideration has, to this time, led usually to such wide differences of statement and conclusion as to end in recrimination and general confusion of mind and conscience. Our question in this essay is whether the outcome of the strife has been an advance upon the general line of historic evolution pursued (in more or less zigzag fashion indeed) since the breakdown of the universal Empire,—with its theory of the divine source and sanctity of the law as transmitted to man through special, divinely appointed organs, and the manifestation of the earliest conscious efforts of men to find in the national consciousness of right a new legitimacy of origin, and a new sanctity springing out of the same, for law,—or whether it was, on the contrary, in direct opposition to this development, an arrest

by man of the natural movement of society in the onward march of human civilization.

There is little question in the mind of any intelligent, honest, and impartial historian today that the plans of conquest of Russia, France, and Great Britain, both in the genesis and prosecution of the war, were directly opposed to the development of a genuine national-state organization in central Europe, and were in the line of the substitution of a few vast empires therefor, in which the most of the territory of this part of the earth, and the most of the population inhabiting the same, should stand in colonial relation to three small groups of clever men sitting severally around a table in St. Petersburg, Paris, and London. Already before the outbreak of the war these three groups held control of more than one half of the landed area and the whole of the water area of the world, while the powers of the Continent which were soon to become their enemies in battle did not control, and could not draw supplies from, one tenth part of the other half. Not satisfied with this division of the earth and its resources, these three great colonial empires entered into an arrangement with each other,—into which they drew Italy, Rumania, and of course Serbia and Montenegro,—bearing date of April, 1915, which arrangement pledged all of these states and quasi-states to the following distribution of the spoils of victory at the end of the struggle: Russia was to be enriched by the acquisition of Constantinople, the Bosphorus, the Sea of Marmora, and the Dardanelles, and practically all of the Ottoman Empire lying to the west of this line, and in addition the islands of Imbros and Tenedos (in the Ægean Sea and lying across the south end of the Dardanelles); also a free hand in northern Persia, Ispahan, Yezd, Trebizond, Erzerum, Van, Bitlis, and a number of other places in Asia Minor; and to all this was added later the permission for the

great empire to fix the line of its western frontier in middle Europe according to its own sweet will.

To France was promised Alsace-Lorraine (including the whole of the old dukedom of Lorraine) ; the Saar valley with all of its mines; the temporary occupation of the western Rhine valley, with permission to create in it a buffer state against Germany and to draw its own eastern frontier, as well as the frontiers of this buffer state, as it would; also Syria, the vilayet of Adana, the oil fields of Mosul (along the Armenian border), and a share of the German colonies.

Great Britain was to be allowed to take the northern Persian zone, the southern districts of Mesopotamia, Bagdad, a good slice of Syria (including Haifa and Acre), and the largest part of the German colonies.

Italy was drawn away, finally, from her allies of the Triple Alliance by the generous bait of the Trentino, Gorizia, Gradisca, Trieste, Istria, Valona, the Dalmatian coast, the islands lying off this coast and that of Istria, and also the islands of the Dodecanese, Adalia, and a large district in Asia Minor, and some new colonial territory to be designated later by the three great colonial empires, Great Britain, France, and Russia.

Rumania's wavering policy was finally overcome by the support given to its British-born, British-educated, and British-friendly queen through the promise of Transylvania, Bukovina, and the Banat.

Finally, Serbia and Montenegro were to get the southern coast of Dalmatia, Spalato, Ragusa, Cattaro, and northern Albania. A little later Japan was drawn in by the permission to seize Shantung from China.

Such were the imperialistic aims of the three great world empires and their European allies, as drawn up and signed in a thoroughly authenticated state paper by the ambassadors

of Russia, France, and Italy and the British Secretary of Foreign Affairs during the first year of the Great War, and increased and expanded as it went on.

There is no such clear, authenticated, and official statement on the part of the Central Powers regarding their aims in case of their being the victors in the struggle. Their claim was from the beginning that they were simply defending themselves against a deeply laid plan on the part of Russia to dismember and destroy the Austro-Hungarian Empire in order to get hold of Constantinople, the Straits, and the Sea of Marmora and thus gain an open way, under her own control, between the Black Sea and the Mediterranean, and to bring the Slavic, quasi-Slavic, and pseudo-Slavic elements of the Hapsburg empire and the Balkan states into the empire of the Czar,—a plan supported by France with the purpose of satisfying the long-felt and assiduously cultivated revenge for Sedan, and by Great Britain with its aim of getting rid of the powerful and ever-increasing competition of Germany in manufacture, commerce, and world-carrying trade. They had not even gone so far as to form any official plan for the union of the Balkans in the valley of the Danube with the Austro-Hungarian Empire, which would have been the ideal outcome of the great struggle, and with the extension of the kingdom of Greece to the Balkans as its northern frontier and with Constantinople for its capital would,—so far as finite reason reaches,—have settled with some promise of permanence and progress the Balkan question, and would have substituted two genuinely national states for the more than half a dozen political caricatures which now disfigure, disturb, and distress that fair and fertile portion of the earth's surface with their silly, snarling diplomacy and their disgusting misdeeds and crimes. As we have said, the Central Powers had not at the beginning, nor during the course of the war, gone even so

far as to give any official form to this natural and devoutly-to-be-hoped-for realization as a war aim,—to say nothing of any further plans for conquest, all of which were distinctly and repeatedly disavowed by them. It was only an idea, which during the period between 1907 and 1914 had been bruited about in the political and juristic circles of the Hapsburg empire, and which to my personal knowledge had taken fair shape in, and firm hold upon, the mind of Franz Ferdinand, the crown prince and heir to the imperial throne.

So far as there is any reliable evidence of any thought of territorial expansion as a war aim of Austria-Hungary, manifested either before or during the conflict, this is the shape, size, and purport of it at the utmost. The larger plan for the perfecting of genuine national states in Europe generally, as required by the Continent's physical geography and economic unities,—such as has already been outlined in the early part of this chapter,—was, as far as I have been able to discover, never mentioned in any official document nor suggested by any person in authority nor by any writer or speaker of influence. While as to the wild charge of an intent on the part of the Central Powers to conquer the world by force of arms and to loot its treasures, and of bringing on the war—after perfected preparation—for this purpose and prosecuting it for this purpose (from the realization of which they were prevented only by the defeat on the field of battle), this is neither history nor even sane conjecture, but the most arrant, unspeakable nonsense, too puerile to be entertained by any grown-up individual. This notion is still kept going, after sanity has begun to return, by certain European tricksters, and their abettors and dupes in America, for the purpose of doing the United States of America out of the billions lent by them to the vast empires and their satellites to carry on their war of conquest, by representing themselves as having protected the

United States from being conquered by the Central Powers of Europe, and that the loans were therefore only just contributions made by the United States for not having gone into the war earlier in aid of the great imperial colonial combine in their claimed ideal effort to save the world from Teutonic barbarism. Their argument would be far more convincing to logical minds should they affirm that the United States of America have, by their unwarranted interference in the internal affairs of Europe, prevented Europe from settling her domestic questions in her own way, and have thereby brought about the widespread destruction of European wealth, business, education, culture, and civilization which now afflicts that unhappy continent and have arrested its historic progress in the development of genuine national states for a century to come; and that, therefore, the United States of America should pay for all this ruin and decay by at least canceling all of the debts and obligations of the European states to them. The only way in which the United States can meet this logical onslaught is by the contention that all of this talk about their having been saved from conquest by and subjugation to the Central Powers of Europe through the valor of British, French, and Italian arms is hypocritical nonsense, conscious or unconscious, and that what really happened was that the United States saved them, by the valor of America's sons as well as by their contributions of help and loans of money, from defeat and from the infliction of such reparations and retributions as an irate victor might be inclined to impose on enemies who had deliberately planned his strangulation by a relentless, constantly tightening encirclement. Until the leaders of thought in this country—if there be any such—shall take this view of the situation and teach it to their fellow citizens, I cannot see but that the European repudiationist has the better of the argument.

Let us return, however, to our precise question, namely, the fate of genuine nationalism in Europe as affected by the Great War. We have just observed how the great powers forming the Entente had already, as far back as the spring of 1915, determined on detaching large and important territories from their enemies, if victorious over them,—as they surely expected to be,—and that every other subsequent agreement between them was a confirmation and solidification, in whole or part, of this London Agreement.

When, now, the President of the United States went over to Paris at the close of the war,—to “measure his intellect against that of the European statesmen,” as he expressed himself,—he found that, despite the Fourteen Points, to which he had pledged himself as the basis of the armistice, the Entente statesmen and diplomatists were determined to insist upon the fulfillment of the terms of the prior understanding. They were greatly strengthened in this resolution by the fact that they found in Mr. Wilson a man who had no proper conception of what constitutes a nation,—a man whose childhood and youth had been passed amid the ideas and events of the period of secession and rebellion in the United States, and who was, because of such experiences, prone to confound race and even tribe with nation. The outcome of the intellectual tilt between gladiators of such origin, disposition, aims, and training might have been easily anticipated. It was simply the further Balkanizing of Europe. Instead of bringing the lines of political divisions to correspond more nearly with those of physical geography and economic unity (as nature intended and intends, and as history had been, for a half-century or more, effecting), they undertook to make the lines of sovereignty approach those of the ethnical unities, or rather disunities, which still divide and distract middle Europe; with the inevitable result that sover-

eighty scarcely arrives at full legitimacy anywhere and is lame and halting almost everywhere, while law is looking in vain for the sanctity it has lost,—no one seems to comprehend how or where. We would venture to mention again—as we have suggested more than once before, but, on account of its controlling importance, would dwell upon with all the emphasis we can summon—that the reason lies chiefly, if not exclusively, in the fact that too much stress has been laid upon the least important of the three fundamental elements in the formation of the modern state, and that until this great defect is remedied the seething of European society must go on, and war hold its place as one of the great means of solving public questions, and a chief means, too. And it is better that it should be so than that the world should sink down into an apathy brought about through premature unity and over-centralized rule by the predominance of three or four vast empires, not only governing as colonial empires the greater part of the earth's surface but interfering, by means of a so-called League of Nations, in the internal affairs of many other states claiming national independence and sovereignty.

As was to be expected from the turn affairs took, first in consequence of British and then finally of American intervention, not only were none of the less pressing, though long-standing, questions of national evolution considered,—such as the relations of the petty states of Portugal, Andorra, Belgium, the Netherlands, Switzerland, San Marino, Luxemburg, and the like to the larger political organizations existing within the same geographical unities with themselves,—but the great festering sore in the body politic of continental Europe was irritated and exacerbated and exaggerated until it has spread over the entire Danubian lands, not to mention its farther limits, namely, the Balkan question,—the question of general European disorganization in the supposed in-

terest of the British and French colonial empires. Stripped of all mendacity and hypocrisy and of the trappings and coloration of propaganda, this is the meaning of the demoralizing entanglements, of the intricate and confused involutions, of the almost universal retrogression, which for ten years now has held Europe in its strangulating grasp. Especially is its baleful influence and effect manifest to the student struggling with the great question of finding a new sanctity for law in the national consciousness of right, justice, and polity. The whole of middle and eastern Europe had lost its grip on legal sanctity from the point of view of legitimacy in origin, simply because it had lost the conception of the genuine nation which since the beginning of the nineteenth century it had been forming (slowly and painfully, it is true, but in the main truthfully and successfully), out of which had been born the British nation, the French nation, the Spanish nation, and lastly the German, Italian, and Swedish nations, with fairly correct frontiers from the points of view of geographical, economic, and ethnical unity, and wanting rather in the adjustment of detail than in any revolution of principle to perfect the new system of legal sanctity resting, as to origin, on human reason,—human reason arriving at its conclusions through genuine national organization of its consciousness of right, justice, and polity, and formulating these conclusions into commands with physical penalties for disobedience to them,—penalties promptly, impartially, and universally inflicted.

There was left, thus, in 1914 only the genuine nationalization in principle of the population of the valley of the middle and lower Danube between the Carpathians and the Balkans, and of that of the peninsula south of the latter range, to be accomplished when the European world assembled its forces for the great effort of putting the finishing touch upon the

national-state system for middle and southeastern Europe,—with its principle of the origin and sanctity of law as required by modern civilization,—and, so far as is now apparent, failed (for the moment, at least), being shipwrecked upon the excessive valuation accorded the ethnological element in the formation of the modern nation, and bringing about thus a solution of the problem for southeastern Europe which comports more nearly with the situation of the nomadic tribes of the early periods of European history than with the modern conditions of social, political, and jural life. While Europe when viewed geographically should have, and is prepared to have, only eight sovereign states this side of the eastern ridge line of the watershed of the Vistula and of the Black Sea, the Straits, and the Ægean, it actually has some twenty-eight, in the greater number of which the lack of the geographical and economic elements necessary to the formation of modern national states has strewn the seeds of strife and war near and far. The modern European world is coming to understand through its most recent experiences that not every group of men who get together in a mass or body is authorized to assume sovereignty and constitute itself a source of law and a giver of legal sanction. It is now beginning to comprehend that a body of men so authorized must have certain marked, unmistakable characteristics which we include under the term “nation.” The trouble is that they have not yet arrived at a perfectly clear conception of what these characteristics are, and are still entirely at sea regarding their relative value. Four men out of five will reckon ethnical harmony and, within this general conception, sameness of speech as the controlling quality; while the modern conditions of fixity of abode connected with the facilities of travel and intercourse without migration, and the development of more or less clearly cut social, moral, political, and legal philosophies,

have made this oneness of language a matter of secondary importance when brought into contrast with the more powerful influences of a geographical and economic nature. In fact, without satisfying these the thing frequently called a nation is spurious when contrasted with the genuine article, from which it may not be, in the common view, sufficiently clearly distinguished.

It is plainly evident—yes, painfully so—that with the back-set given by the late war, and the wrongly named “treaties of peace” concluding it, to the development of the system of genuine nationalism in the European world, the world in general and that continent in particular is much farther away from resting on a real national system of authority and legal sanctity than it was in the beginning of the year 1914, and that law has lost in sanctity from its loss of clarity as to legitimacy of source in the minds of men. And when we regard the subject from the standpoint of the rationality of content, we meet with the same disturbing tendency; and naturally so, since we have only to ask ourselves how rationality of content in law is to be determined in order to become immediately aware of the close connection between the two questions,—so close as to be really only two sides of the same question. In other words, most men do not conclude the rationality of a legal proposition so much from the abstract correctness of a principle involved as from the character of the body asserting the rule and requiring obedience to it. If men are satisfied intellectually of the soundness of the authority demanding submission, they are generally inclined to assume the righteousness of its command and to feel the duty of yielding to its will; in other words, to feel that compelling power over the individual conscience to which the legists and jurists give the title “sanctity of law.”

To the reader who has followed understandingly the first

chapters of this book this is entirely comprehensible. The Christian European tradition of more than a thousand years, which gave to law its sanction from the divinity of its source, and the divinity of the appointment and ordination of the organs of its interpretation and transmission to men, is still strong in a large part of the population of Europe, and exists in some degree in all parts of Christian Europe; that is, in all of Europe this side of the Baltic, the Vistula, the Black Sea, and the Straits, and even beyond this general frontier at many points. It is also the philosophy of the Orient.

In the history of human culture we can claim that it is in relatively few minds that the human reason has as yet reached a stage in its development where it may substitute its own inherent power of reflection, and the attainment of truth thereby, for the revelation from divinity and through organs chosen by divinity; and that these minds are still too often obliged to assume the responsibilities of revolution, to say nothing of the discomforts and hardships of business boycott and social ostracism, in order to gain a foothold for the claim that rationality of content should be a requirement in the modern philosophy of legal sanction. There is a long road ahead of us still before we shall have created any effective participation of the mass of adults, in genuine national groupings, in the interpretation of truth and right and in giving sanction to law,—a consummation which implies, at the outset, an opportunity for the participation of every individual through the freedom of thought and speech, unintimidated by fear of punishment for their exercise. The exaggeration of the concept of loyalty during the late war—of loyalty to spurious groupings asserting sovereignty (that is, unlimited authority and power) and conferring the same on governments which used it ruthlessly—made havoc with the slowly developing political philosophy feeling its way to the claim

for rationality of content as part of the sanction in modern legality. He who or that which possessed the power to execute the law must be obeyed,—this was the war philosophy as to legal sanction, not only in regions occupied by the fighting forces, not only in the states that were belligerent, but also in the nonbelligerent and neutral states. For the moment, civilized man had gone back to the barbarous philosophy of force as the source and sanction of law,—no matter what the nature of the source from which the command proceeds, no matter whether its content coincides with right reason or not. If only the physical power to compel obedience is there, and is promptly, freely, and effectively used to enforce it, that is all that is necessary to give sanction to the law.

It was, however, natural and even unavoidable that there should come a terrible revulsion against such crude and rude absolutism. It contradicted squarely and directly the very first principle of the modern rationalistic method for the acquisition of truth. It was bound to give way to the other extreme, and to bring about the contempt for law felt by individuality released from the fear of physical punishment for disobedience to governmental command. During such a period the moment is poorly chosen for weakening the means of power necessary to the enforcement of law. There may come a time when disarmament shall be advantageous to the world, but the present situation does not appear the most favorable imaginable for that. Universal military service is rather in disfavor at this date, judging from the ravings of the daily press. It has its dark sides, it is true, but also its bright ones. Today its dark sides are exaggerated and its bright ones ignored. Its hygienic, educational, and disciplinary values are unquestionable when intelligently considered and calmly weighed, and it has made good more often than it has failed under the hardest political and patriotic tests. Its

abolition is premature, to say the least. Man has as yet found nothing to take its place which has so many advantages alongside of so few disadvantages. We have not done with war as a means of settling great public questions, however much that may be desired; and universal military service for a short period has a tendency to give the recourse to war something of the nature of an appeal to a final instance, while a standing professional force of lifelong soldiers is much more prone to look to war as a primary as well as an ultimate means for dealing with all questions, and has always been a greater encouragement to adventure. And when we come to the necessity for using the military in the execution of the law internally, universal service is the far safer form of army organization for the preservation of civil liberty,—one far less likely to be resisted, far less likely to be productive of revolution.

Lastly, from the point of view of certainty, promptness, and impartiality in the enforcement of law, law has lost ground in the intelligence and conscience of men—that is, in sanctity—about everywhere. Even the most primal force productive of obedience to law has been rudely shaken and disorganized.

We must not, however, lose faith that European civilization will find a way out of this universal dissolution. In fact, many men believe that the way has been already found; and it is the purpose of the final chapter of this little book to examine into the correctness of this assumption.

CHAPTER XVI

DOES THE SYSTEM OF THE "LEAGUE OF NATIONS" REMEDY AND COMPENSATE THE DEFECTS OF THE TREATY OF VERSAILLES OF 1919?

The illustrious Italian historian Guglielmo Ferrero has very recently written regarding the so-called but misnamed League of Nations the following trenchant and enlightening words :

The League of Nations is suffering from a constitutional malady, namely, the spirit of its Covenant, which was drawn up not so much to guarantee peace as to guarantee the division of spoils among the victors at Versailles. The League of Nations cannot become a league of peace or of peoples as long as this spirit prevails, or while the United States and Russia are out of it.

For altogether opposite reasons these two countries, so widely different in civilization and wealth,—the one being a capitalist, the other an anticapitalist power,—are those which have the greatest influence upon world politics.

The European war of 1914-1918, whoever willed it and whatever responsibilities might have been involved in it, was a European civil war that destroyed the largest number of men and the greatest amount of human wealth and welfare [of any war in its history].

The peace which resulted from it has weakened the whole of Europe—victors, vanquished, and neutrals. There is no longer in Europe only one Austria-Hungary,—that is a single country composed of different nationalities ; there are now at least six or seven.

There is no longer one Alsace-Lorraine question,—that is, one contested territory ; there are at least nine or ten, and in addition

there are the dictatorships. Both large and small countries, for some reason or other, have various forms of dictatorship; there are, in any case, six in Europe.

Six dictators mean a permanent menace of wars and revolutions, or probably revolutions after wars; for the experience of the past has shown that the almost essential end of a dictatorship is war.

Out of this complex diminution of the power and wealth of Europe two facts stand out prominently: the displacement of the axis of world politics, and the ever-increasing strength and influence of the United States of America. Probably this is due not so much to the aggrandizement of America as to the weakness of Europe.

In spite of all, I do not believe the United States will ever enter the League of Nations. America knows full well that her power will thus be decreased. Under present conditions America may sometime be in a position to impose peace.

If she entered the League of Nations she would be placed on the same footing with other states, which can contribute to neither the peace nor the prosperity of the world.

The United States, which at present occupies an unparalleled position in the world, would find herself on a level with other countries which offer no guarantee of peace.

But even if the League of Nations were considered only as a European association, the absence of Russia would be a very serious matter.

I consider Russia as an enormous political power, inasmuch as she has nothing to fear. Her government is very bad, her responsibilities are very great, her Bolshevism is the socialism of poverty; but Russia has nothing to fear from the European governments.

The latter have tried every possible means to reduce her to unconditional surrender—military means, insurrectional revolts, and economic isolation.

Russia has withstood them all, and there is now no European government that can effectively threaten Russia. Under such conditions, and considering that her frontiers have not been recognized,—especially with respect to Bessarabia and eastern Galicia,—Russia, by the mere fact of nonparticipation in the League of

Nations, will render the task of the League very difficult and undoubtedly decrease its efficiency. There can be no effective disarmament agreement without Russia.

If the League of Nations were in working order, a disarmament conference would itself be useless. As it is, one is impotent and the other useless.

It must be kept in mind that these words of the distinguished historian in criticism of the League were promulgated in November, 1926, six years after the organization of the body, and after seven ordinary sessions of its Assembly and forty-two sessions of its Council had taken place,—with all the opportunities for the acquisition of sound views which such experiences afford. This criticism by one of the first citizens and, it may be claimed, the first educator of one of the chief allied powers in the late war,—one of the five powers having permanent seats in the Council of the League,—is a confirmation of the fears expressed, at the date of the formation of the League, by the two most interesting political organizations of the era, namely, Switzerland and the United States of America. One of these, after long deliberation and by a close vote, entered the League, while the other refused altogether what had some appearance, at least, of being the leading place in the political world.

The attitude assumed by these important states toward the system of the new world union was practically identical, although the resolution reached in one case contradicted that arrived at in the other. The seeker after the meaning of events, however, cannot help getting the impression that in one case there were manipulating forces playing a rôle—and a highly controlling rôle at that—which did not enter into the calculation in the slightest in the other case. In order to understand clearly what these were, as well as to fit ourselves for answering the query which gives title to the closing chap-

ter of this little book, let us subject the so-called Covenant of the League of Nations to a brief analysis.

The preamble states as the purpose of the League the promotion of international coöperation and the achievement of international peace and security, and designates as the means for the accomplishment of these ends, first, "the acceptance of obligations not to resort to war"; second, "the prescription of open, just, and honorable relations between nations"; third, "the firm establishment of the understandings of international law as the actual rule of conduct among governments"; and fourth, "the maintenance of justice and a scrupulous respect for all treaty obligations in the dealing of organized people with one another."

The text of the Covenant of the League then refers to the framers of the Covenant of the League as the "High Contracting Parties"; and these, in the first article of the Covenant, proceed to declare that "the original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant, and also such of those other states named in the Annex as shall accede without reservation to this Covenant." As will be seen, three terms of designation are introduced here which must be accurately distinguished from each other at the outset and carefully applied throughout. They are "the High Contracting Parties," "the Members of the League of Nations," and "the Signatories."

The "High Contracting Parties" and the "Signatories" are evidently the same parties. They are the signers of the Treaty, or Treaties, of Versailles, of which the Covenant of the League of Nations is an incorporated portion; while the term "original Members of the League" includes only those signers of the treaty and other states specifically mentioned as such in the Annex to the Covenant. These original members, finally, are authorized by the second paragraph of the

first article of the Covenant to select, subsequently, any fully self-governing state, dominion, or colony, not named in the Annex, to become a Member of the League, provided its admission is agreed to by two thirds of the Assembly.

Here we find occurring for the first time in the text of the Covenant a new technical term of highest importance in the interpretation of the Covenant as the organization and powers of the League, namely, "the Assembly." The third article of the Covenant defines it as composed of representatives of the members of the League, leaving it to each member to select its representatives (not to exceed three) in its own way, and exercising only one vote.

Beginning with the most comprehensive of these terms and proceeding to the more limited, both in extent of membership and authority, we may arrange them, tentatively at least, in the following order:

First, the high contracting parties, the signatories to the Treaty, or Treaties, of Versailles, the belligerents in the World War of 1914-1918, both victors and vanquished.

Second, the original members of the League, the belligerent victor-signatories named in the Annex by the signatories, and the nonbelligerent bodies named in the Annex by the signatories. These belligerent victor-signatories were thirty-two in number, namely: the United States of America, Belgium, Bolivia, Brazil, the British Empire, Canada, Australia, South Africa, New Zealand, India, China, Cuba, Ecuador, France, Greece, Guatemala, Haiti, the Hejaz, Honduras, Italy, Japan, Liberia, Nicaragua, Panama, Peru, Poland, Portugal, Rumania, the Serb-Croat-Slovene state, Siam, Czechoslovakia, Uruguay; and the nonsignatories,—that is, the neutrals in the war,—designated by the signatories to original membership in the League were thirteen in number, namely: the Argentine Republic, Chile, Colombia, Denmark,

the Netherlands, Norway, Paraguay, Persia, Salvador, Spain, Sweden, Switzerland, Venezuela.

A certain condition, however, was attached to the case of these latter becoming original members of the League, namely, that each should accede to the Covenant without any reservations and should do so "by a declaration deposited with the Secretariat within two months of the coming into force of the Covenant."

Third, members of the League, chosen subsequently to membership by a vote of the Assembly with at least a two-thirds vote in favor thereof. Every such member, however, must be placed under the restrictions of giving "effective guarantees of its sincere intention to observe its international obligations" and of *accepting "such regulations as might be prescribed by the League in regard to its military, naval, and air forces and armaments."* The Assembly has admitted thirteen such bodies under the aforesaid limitations, namely: Albania, Austria, Bulgaria, the Dominican Republic, Estonia, Ethiopia, Finland, Hungary, the Irish Free State, Latvia, Lithuania, Luxemburg, and lastly the German Empire.

It will thus be readily perceived that while membership in the League was primarily created by an original act of all of the signatories to the Treaty of Versailles on the contractual principle of unanimity of agreement, some of these signatories were themselves excluded from original membership—namely, the vanquished—and, if ever admitted thereafter, condemned to suffer an inequality of a most grievous nature with the original members,—so grievous as to signify a decomposition of character at the most sensitive point, the point of sovereignty, that complete, independent, and undisputed self-determination without which no organization of men is a state, whatever else it may be or in whatever political trappings it may strut about. It is difficult to conceive

how even such political travesties as Ethiopia, Esthonia, Latvia, and Lithuania can, while claiming to be states (sovereignties), accommodate themselves to such limitations. It is more difficult to understand how Austria, Bulgaria, Finland, and Hungary can do so. When we come, however, to the case of the German Empire (that great national union of middle Europe which, either as a whole or in its parts, has borne the burden and done the work and reaped the glory of the civilization and culture of Europe and of the world, in large—if not largest—part), we of today who have participated in that education and have witnessed that humiliation can only stand with bowed heads in silent wonder before such ignominy and ask ourselves incredulously what solution the future may offer for this great riddle of today.

Before proceeding further with the analysis of the text of the Covenant, however, let us fix clearly in mind the import of two more very important technical terms designative of the two other fundamental organs of the League, which, with the Assembly, make up the constitutional departments of what we may term the government of the League. They are "the Council" and "the Secretariat."

The Council, as created by the fourth article of the Covenant, is made to "consist of representatives of the principal Allied and Associated Powers (the United States of America, the British Empire, France, Italy, and Japan) together with representatives of four other Members of the League." These four members thus authorized to have representation in the Council are, according to the text of the Covenant, to "be selected by the Assembly from time to time in its discretion"; and "until the appointment of the representatives of the four Members of the League first selected by the Assembly," Belgium, Brazil, Greece, and Spain were designated by this article of the Covenant as the members to have representa-

tion on the Council. The Council by unanimous vote, with approval of the Assembly by majority vote, is authorized, however, to increase the number of members of the League who shall have permanent representation in the Council, and also the number of members to be chosen from time to time by the Assembly to have temporary representation, which representation shall at the will of the Assembly be alternative. The text of the Covenant also requires that "any Member of the League not represented on the Council shall be invited to send a representative to sit as a Member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League."

The Covenant finally vests each member of the League, authorized to function in the Council, with "not more than one representative" and with "one vote" therein.

The Council and Assembly, in exercise of the power, just mentioned, of increasing the number of members of the League having representation on the Council, have added one permanent and five nonpermanent seats; and the Assembly at its September session of 1926 vested the German Empire with the new permanent seat, and named nine members of the League—namely, Belgium, Chile, China, Colombia, Czechoslovakia, the Netherlands, Poland, Rumania, and Salvador—to nonpermanent representation therein.

Of the fifty-six members of the League only fourteen thus have at present direct representation either permanent or nonpermanent in the Council. It must not, however, be forgotten that the nonpermanent representation may be alternative at the will of the Assembly, in which all the members of the League are directly and permanently and equally represented, and both permanent and nonpermanent representation further increased at the will of the Council and Assembly.

The other term which has been already employed and requires exact definition is "the Secretariat." This part of the machinery of the League is created by Article VI of the text of the Covenant, and reads as follows: "The permanent Secretariat shall be established at the seat of the League, and shall comprise a Secretary-General and such secretaries and staff as may be required. The first Secretary-General shall be the person named in the Annex; thereafter the Secretary-General shall be elected by the majority of the Assembly. The secretaries and the staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council." The person named in the Annex as the first Secretary-General is the Hon. Sir James Eric Drummond, of Great Britain, who is still acting in that capacity. This Secretariat is the nearest approach to an executive power that can be found in the text of the Covenant, or constitution, of the League; although the various committees, commissions, and international bureaus which the Assembly or Council may create bear something of that character, and a tendency to their subordination to or affiliation with the Secretariat is observable.

The original Covenant of the League does not contain any provision for what we may term a constitutional judiciary; but Article XIV vests the Council of the League with the authority and power to "formulate, and submit to the Members of the League for adoption, plans for a Permanent Court of International Justice," with competence "to hear and determine any dispute of an international character which the parties thereto submit to it," and also with competence to "give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly." Plans for such a court have been formulated by the Council of the League, and submitted to the members of the League and to

the United States of America for adoption; and they are now before these bodies, under a certain modification imposed upon them by the Senate of the United States.

Thus far, in our examination of the text of the Covenant, we have found its contractual nature tolerably well preserved, although in one or two points the inclination toward a recourse to the exercise of sovereignty begins to appear. This, however, seems, at the moment, countered by a provision in Article I of the constitutional instrument authorizing the secession of any member from the League upon giving two years' notice of its intention of doing so, and after having fulfilled all of its international obligations and all of its obligations under the Covenant. This contractual character is further pronounced by the article of amendment, Article XXVI, which provides that "no amendment of the League shall be obligatory upon any Member which signifies its dissent therefrom"; but it is again neutralized by the other provisions of the article, which command amendments "to take effect when ratified by the Members of the League whose representatives compose the Council, together with a majority of the Members of the League whose representatives compose the Assembly," and command, further, that any member of the League dissenting from an amendment to the Covenant thus ratified shall cease to be a member.

As we advance to an examination of the powers vested in, or assumed or arrogated by, the League or its organs, we become increasingly conscious of the tendency to leave the sphere of contract and go over into that of sovereignty; that is, of the tendency to substitute for the rule of unanimity the act of a majority in requiring obedience to command and in fixing and inflicting punishment for disobedience,—in other words, to create a new body of law and to safeguard it by sanctions.

The sphere of operation recognized by the text of the Covenant as belonging to the competence of the Assembly and the Council of the League is a very broad one. It is the same in both cases, and is held to reach "any matter within the sphere of action of the League or affecting the peace of the world." Inasmuch as the Council and Assembly of the League will probably claim the ultimate determination of what affects the peace of the world, as well as of what comes within the purview of League action, it is rather difficult to divine what may not come directly or indirectly, sooner or later, under the jurisdiction of the League's organs. A Julius or a Charlemagne or a Napoleon or even a Roosevelt could get about anything out of an investment of power like that. The practical question is, however, whether the Covenant of the League requires the use of power in this practically unlimited sphere by its organs only contractually or allows it by sovereign, or governmental, act.

The article of the Covenant immediately following those just quoted declares that "except where otherwise expressly provided in this Covenant, or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting." This looks as if the supposed danger possibly lurking in Articles III and IV had been extracted by the pronounced adherence to the principle of contract as the normal rule of action for the organs of the League. But in the next paragraph of the same article it is "expressly provided in the Covenant" that "all matters of procedure at meetings of the Assembly or of the Council, including the appointment of committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting." The line of

boundary between procedure and the law substantive is not always extremely clear; and as the Council and Assembly of the League would probably claim to be the bodies that would fix this boundary—in detail, if not in principle—between the two spheres when pertaining to matters coming before them, it is not an unnatural conjecture that a capital opportunity there presents itself for laying out very extended boundaries, for “the sphere of action of the League,” by the organs of the League itself.

Passing over, now, into the unquestioned domain of the law substantive, we find that the Covenant, in order to accomplish the purposes of the League, leaves the contractual principle in a number of respects behind. Taking, for instance, the question of disarmament, the Covenant declares this to be a capital point, and lays down as the allowable degree of armament “the lowest point consistent with national safety.” The Covenant assumes for the League or its organs only the function of inquiry and recommendation; in first instance, its words are:

The Council, taking account of the geographical situation and circumstances of each state, shall formulate plans for such reduction for the consideration and action of the several Governments. Such plans shall be subject to reconsideration and revision at least every ten years. After these plans shall have been adopted by the several Governments, *the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.*

Here is something more than contract. Here is a power asserted over the government of every state member of the League. The language of the Covenant upon this point is also remarkable. It appears to inject the veto of the Council between the state and its government. That is to say, if a member of the League is a state which has a constitution in which

the sovereignty therein is organized separately and differently from the government and supreme over it, this clause in the Covenant appears to displace that sovereignty upon this point and substitute the Council of the League for it, at least when acting negatively. Either it assumes to do this or else it confounds the state having this separate organization for its sovereignty and its government with its government, and does not clearly convey its meaning nor expressly mention which of the organs of the League is authorized to clear up by ultimate interpretation the ambiguity.

There are writers upon public law who claim that a state, in virtue of its general sovereignty, may convey by way of contract or treaty its sovereignty over a given subject or subjects to another state or government and still remain sovereign over all other subjects. We may admit this provisionally for the sake of argument and still hold that a state which surrenders by its own act its sovereignty over a given subject to some other body, and engages to submit, willingly or unwillingly, to the commands of that other body within the sphere of that subject, has actually destroyed its own statehood; that is, unless it can be made to appear that the said state, of its own volition, has vested power over the given subject in that other body as its own chosen agent of elaboration and execution, with the power always remaining, as a matter of course, in itself of the delimitation of the sphere of the subject and of the nature and extent of the power over it, and of modifying and withdrawing the same, in whole or part, at its own pleasure. In fact, we shall not free ourselves from ambiguity in reasoning within the domain of modern public law until we completely separate in our thought "state" and "government," regarding sovereignty as ultimate, unlimited, indivisible self-determination at every moment, and, as such, the distinguishing characteristic—the soul and substance—of

the state; while government is an agent created by the state in its own self-made constitution, and employed by it for the elaboration and execution of its will within certain definitely defined and delimited spheres. The state, the organized sovereignty, may thus employ one agent or organ or several to carry out its will, according to its own volition, and is not sacrificing its sovereignty when it does so.

In the case we are considering, the belligerent signatories of the Versailles treaty assumed primarily the authority of vesting the Council of the League with an absolute veto over every League member's government regarding a given subject, namely, the increase of armaments above the maximum strength allowed by the plan for disarmament to be adopted by these several governments on proposal of the Council. On agreeing to the Covenant of the League with this provision in it, each member of the League—or mayhap it were better to say the treaty-making organ of each member of the League—divested its own government of the most important function a government is ever called upon to exercise, namely, the authority to create, organize, and wield the power to realize its will and maintain public order, security, and defense. It is, first of all, a very serious question whether the treaty-making organs of the said League members' governments possessed such authority over themselves. I am quite decidedly of the opinion that the treaty-making organ of the government of the United States of America has no such power. I feel pretty sure that nothing short of the amending power of the Constitution of the United States can vest in the Council of the League of Nations a veto power over the Congress of the United States which should forbid Congress to raise and support armies, to provide and maintain a navy, at any time and of any strength it might consider necessary or advisable; and should the amending power, the continuing sovereignty,

of this constitution do this, the proper juristic conception of the relation thus created would be that the Council of the League of Nations was *ad hoc* an organ of the United States government whose services might be dispensed with at any moment by the same sovereignty which enlisted them and in the same self-determining way. It is evident that the statesmen and jurists of the Swiss Federal Council, who were intrusted with the very serious task of examining the text of the Covenant and making report thereon to the Swiss Federal Assembly, were deeply embarrassed by considerations like those just presented and had in mind a method for their solution similar to that just suggested. In the introduction to the message of the Federal Council to the Federal Assembly advising the entrance of Switzerland into the League occurs the following language:

From the publication on April 28, 1919, of the final draft of the Covenant, Switzerland took up the study of its text studiously, in the best of temper, seeking its legal meaning, weighing its debits and credits with all the statesmanship her government could command. The result was a report examining every detail, and concluding with a recommendation that Switzerland join the League, *adding the Covenant itself to her Constitution.*

This would have made the organs and officials of the League Swiss organs and officials, and would have made the powers vested in them by the Covenant, when touching Switzerland in their operation, powers emanating from the constitutional sovereignty of Switzerland. The question, thus, of breaches made in the sovereignty of the Swiss state by the functioning of these organs and officials in determining matters affecting Swiss rights, interests, and authority would have been avoided. As we shall see a little farther on, the Swiss Federal Assembly did not feel warranted in choosing this course, and

Switzerland stands therefore on like ground with all the other members of the League in regard to this highly important subject.

The authors of the text of the Covenant had themselves manifested looseness of thought—to be mildly critical of them—in the construction of these provisions of the Covenant relative to disarmament. They do not seem to have been able to settle upon any mode of dealing with a recalcitrant member upon this point. They appear to have worn their wits threadbare in its consideration, and then—in sheer disgust, if not despair—to have framed Article IX, which reads: "A permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles I and VIII and on military, naval, and air questions generally." This commission was created and its members appointed, and it has held many meetings; but it is still floundering in the mazes and bewilderments of the subject, without having reached any generally satisfactory conclusions.

The same caution and deliberation are manifested in the text of the Covenant wherever the contractual principle, as a treaty between sovereign and independent states, appears to be yielding to the principle of a supersovereignty—if we may be pardoned the provisional use of the term—in the beginning organization of a European or world state.

The prime purpose of the League is, as we have seen, the achievement of international peace through the outlawry of international war,—a result very difficult of attainment when we remember that down to the date of this Covenant war between states was a lawful (or, more exactly, not an unlawful) method for settling questions in dispute between them. With much wisdom and prudence, therefore, the framers of the Covenant did not undertake to promulgate or even formulate a sweeping statute of abolition of war, with criminal penalties

for bringing it about, and means and methods provided for their execution; but proceeded after the manner of unanimous agreement in most respects, and substituted therefor majority rule only at points where the contractual principle appeared manifestly ineffective.

For example, they took their stand on the unanimous agreement of the members of the League to submit all questions upon which any dispute should arise between them to a court of arbitration such as should be "agreed on by the parties to the dispute or stipulated in any convention existing between them." The exact language of the provision is:

The Members of the League agree that whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration, and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject matter to arbitration.

The point of importance left uncovered in this clause of the provision of Article XIII is the question as to how the members of the League are to determine when a dispute arising between any of them *is* suitable for arbitration. In order to meet this question as far as possible from the outset, the text of the Covenant provides, as a part of the agreement between all of the members, that

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration.

Any further interpretation regarding the question of the suitability of the matter in dispute for submission to arbitration is naturally, in last instance, a matter for the court of

arbitration to determine. The last paragraph of this article pledges the different members of the League to "carry out in good faith any award that may be rendered" and "not to resort to war against a Member of the League which complies therewith"; and, in "event of any failure to carry out such an award," ordains that "the Council shall propose what steps should be taken to give effect thereto." The Covenant also provides for the case of disputes between members over subjects not of a nature suitable for arbitration; and pledges the different members to submit the matter to the Council for investigation and report, and in any event not to resort to war until three months after the award by the arbitrators or the report by the Council.

The Council is held to make its report not later than six months after the submission to it of the matter in dispute, and within this period is required to make earnest endeavor to effect a settlement of the dispute. In case its efforts should prove successful, the Council is directed to make public an appropriate statement regarding the same, setting forth the facts and terms of the settlement. In event, however, of a failure of its endeavors, it is still held to make a report public containing a "statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto."

If, now, the report and settlement agreed on by the Council is unanimous, or unanimous without the vote of any or all the parties to the dispute which may be represented on the Council, then the Covenant pledges the members of the League not to go "to war with any party to the dispute which complies with the recommendation to the report."

If, however, the Council cannot arrive at such unanimity in its report and recommendation, the Covenant reserves to the members of the League "the right to take such action as

they shall consider necessary for the maintenance of right and justice." The Council is authorized to refer the dispute to the Assembly of the League, where all the members are represented directly and equally, and must do so if either party to the dispute should demand it within fourteen days after the same shall have been submitted to the Council. The Assembly is required to follow the same method of procedure in dealing with the case as that prescribed for the Council, except that a positive decision may be arrived at if the vote in favor of it shall include the representatives of all those members of the League who have representation on the Council as well as in the Assembly, together with a bare majority of those who do not.

We come here upon something which has the appearance of an exercise of sovereignty, possibly, over such members of the League as may not have representation on the Council and may have voted against the settlements arrived at by the required majority in the Assembly. It may be profitable, therefore, to examine this provision a little more narrowly. The partisans of the League invariably contend that every member of the League, either when signing the Versailles treaty of which the Covenant is a part, or upon entering the League subsequently, agreed to be bound by this procedure when dealing with this subject, and to submit to the conclusions thus reached (even though voting against them in the balloting upon them); and that this stamps all ensuing operations under it as contractual. As has been already explained, however, this reasoning is not fully satisfactory to the mind which is seeking to be at all times completely logical, and noncommitted by way of interests or prejudices. Such a mind is prodded by the idea that a state submitting, even of its own volition, to the continuous exercise of a sovereign power over it upon a given subject, from which it cannot es-

cape at its own pleasure without legally suffering punishment or exposing itself thereto on account of its act, has already taken a first step—and maybe more—toward the constitution of a federal union with other states pursuing the same course, which generally results in the consolidation of these several sovereignties into a single sovereignty over a larger territory and a greater population, they themselves usually becoming local governments thereunder, of a more or less self-determining character. This may all prove advantageous and in accord with the movement of history toward world organization, but the steps in this advance become less and less of the nature of contracts and more and more of the nature of exercises of sovereignty. This is the point to which we would draw attention.

As we advance now to the consideration of that article of the Covenant which has to do with the settlement of disputes between members and nonmembers of the League, or entirely between nonmembers, this change becomes more marked. This Article XVII provides that in such cases the nonmember or nonmembers shall be invited to membership *ad hoc*; and if it or they accept, the procedure shall be the same as in disputes between members, "*with such modifications as may be deemed necessary by the Council.*" Even before acceptance or refusal, immediately upon the issue of the invitation, the Council is required by the Covenant to institute "inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual." If, however, the nonmember or nonmembers should decline the invitation to *ad hoc* membership, and proceed to war against a member or members of the League or against each other, then the provisions of the Covenant authorize the Council, in the second case, to "take such measures and make such recommendations as will prevent hostilities and will result in

the settlement of the dispute," and, in the first, pledge the members of the League to the same punitive action against the nonmember or nonmembers making war upon one or more of them as required to be taken against any member of the League which, in disregard of its agreements as to arbitration, should make war upon another member. These sanctions thus authorized and required are pretty stiff, also, and include severance of all trade and financial relations between the recalcitrant party and all other states, prohibition of all intercourse—financial, commercial, or personal—between the subjects of such party or parties and those of all other states (whether they be members of the League or not), and expulsion from the League, in case the recalcitrant party should be a member thereof, by vote of the Council concurred in by the representatives of all the other members of the League happening to have seats therein.

It is very difficult indeed to envisage all of these things from the point of view of the contractual principle, either directly or indirectly; and when we undertake to apply that principle in the interpretation of articles X and XI of the Covenant, we find ourselves floundering in a rather disagreeable mental quandary. These articles read as follows:

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression, the Council shall advise upon the means by which this obligation shall be fulfilled.

Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League; and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations.

This is the provision most severely criticized by the opponents of the League. Most of them declare that it stamps the Covenant as a treaty of alliance between victors to conserve the spoils of war, while others point to it as the expressed warrant of an assumption of world sovereignty. Those of the first class declare that the Versailles treaty drew the political boundaries of the divisions of Europe unnaturally, out of accord with its geographic and economic lines, out of step and direction with the movement of history in the development of genuine national states; that this movement of history is destined to go forward, whatever obstacles man may put in its way,—or attempt to put in its way,—and will sweep these, sooner or later, aside, with all the force and attendant destruction necessary to accomplish the end; and that the League, therefore, is but an instrument created by blind and selfish men, momentarily victorious in war, to thwart the aims and purposes of the higher power, whatever that may be, in the evolution of the universe. They fail, however, to meet the question why, after the entrance of the vanquished states into the League, it may not, with a proper spirit prevailing among its members, be made a better instrument for the correction of these defects than the old methods of diplomacy and wars were. Seen from this angle the criticisms of such antagonists appear at least a bit strained. Those who object to the Covenant on the ground of its being a usurpation of sovereignty over the world—expressed in the most pronounced manner in these articles and upon the most material subjects—have the better case; that is, provided they are warranted in assuming that such usurpation is wrongful and injurious. But this too requires to be made out by fact and reasoning. The provision declaring that in event of war or threat of war by any state against any other state in the world, at any time, over any question of dispute,

the League shall have the power "to take any action that may be deemed wise and effectual to safeguard the peace of nations," and shall use it,—this looks quite like a very pronounced usurpation of sovereignty over those states, at least, which may not be members of the League at the time of the exercise of such power over them by order of the League or any of its organs (in which they, of course, have no representation). The contractual principle fails entirely in any such case, and what we have here is either a usurpation or a war of the old sort.

From this brief analysis of the constitution of the League in structure, powers, and operation it appears that we have something here of a heterogeneous nature,—heterogeneous even to a degree of inconsistency at some points. Very largely a matter of unanimous agreement, it comes more than otherwise under the law of contracts for its interpretation and explication; but in some points, and those of highest importance and significance too, it speaks after the manner of the sovereign, in no mild, uncertain, nor trembling accents. And as it goes forward with its work it is quite evident that it will take on more and more of the latter character at the expense of the former, until finally the world will have found its sovereign unity for the source and sanctity of its law and custom. But this course can be pursued too rapidly,—so rapidly as to provoke the most disastrous reactions; and it is the problem and duty of the statesmen and jurists of all countries to hold controlling rein over the movements of the world's political society both as to direction and speed.

We may now revert, with more promise of clear understanding, to the attitude assumed by Switzerland and then by the United States of America toward entrance into the circle of the League. As we have seen, the character and circumstances of these two states distinguished them sharply

from all the others, and made their approach to this question and their consideration of it far more interesting and instructive from the point of view of the problem of this little book than that of any other or all others of the states of the world.

In the first place, they are situated in different continents, widely separated by the Atlantic Ocean. They are, however, both republics, with the sovereign power (the state) organized back of the government,—the government in both cases being what is usually termed the federal system.

Both of them, secondly, have been considered pacifist states, the one, Switzerland, having existed for a century under the protection of a guaranteed neutrality, and the other holding, for almost as long a period, to a principle of foreign policy—entitled the Monroe Doctrine—which until 1917 was generally thought to be a guaranty against war with the states of Europe.

Lastly, one of the two is a small state, having some fifteen or sixteen thousand square miles of territory, inhabited by about four millions of people; and the other is a very large state, with some three millions of square miles of territory, inhabited by about one hundred and twenty-five millions of people. From these different vantage grounds they were enabled to examine the provisions of the Covenant of the League from many different points of view. They came practically to the same conclusions regarding the character, aim, structure, and powers of the instrument; but while the one decided—it would seem, indeed, rather doubtingly, hesitatingly, and half-heartedly—to enter the League, the other rejected the proposition altogether, and appears more confirmed in its attitude today than at any time before. The Swiss jurists designated the League as having the character of a confederation of states. Their exact language was: "The League of Nations may be compared to a confederation of states, rather

than to a simple alliance or to an organization such as the Hague Conference vainly attempted to create." Some of them considered it as going so far in this direction as to be to Switzerland, in case of entrance into it, the destruction of the neutrality of the republic, and its involvement in the wars of the victors in the Versailles pact to maintain their spoils. In fact, the Swiss Commission on National Defense, when asked for its opinion upon the subject, was unable to reach any unanimous or real majority conclusion on the subject, but presented two reports, one of which declared that "the entrance of Switzerland into the League of Nations would be dangerous for her security and for her independence." The Swiss Federal Council included this report in its message to the Assembly concerning the question; and while not approving the view entirely (or perhaps it were better to say pronouncedly), nevertheless gave as its opinion that the absence of compulsory arbitration in all cases left open easy recourse to war, in which Switzerland would be, or might be, involved, despite her guaranteed neutrality so long enjoyed. It also criticized most severely, in this connection, the absence of any provision in the Covenant of the League creating a judicial tribunal for the interpretation, in final instance, of all of the provisions of the Covenant, as well as for the trial of all disputes between states, and with the power of rendering advisory opinions upon any subject laid before it by the League organs or members and, possibly, *proprio motu*. The Swiss jurists did not consider the provisions of Article XIV of the Covenant, providing for the future creation of such a tribunal upon motion by the Council of the League, as sufficient. They also condemned the provisions for disarmament as insufficient and partial, and advocated the speedy opening of the doors of the League to the entrance of the vanquished parties in the late war upon an equal footing with all

other members. Furthermore, they pronounced themselves dissatisfied with the constitution of the Council of the League, as not according sufficient representation to the smaller states and as not requiring rotation of representation among the nonpermanent members. They considered the Council as the most important organ of the League,—the one destined to absorb most of its powers and functions,—and sought, therefore, so to construct it as to prevent it from sharing the fate of the Holy Alliance of 1815. It is very evident that they thought that the provisions of the Covenant either went too far, on the whole, or not far enough. They said this in so many words in the message of the Federal Council to the Federal Assembly :

Ability to appreciate a new thing in the political field is always largely a matter of temperament. Those who wish to stick to the text of the Covenant of Paris, materially incomplete and moreover scarcely clear in many places, and who consider egoism and distrust as dominant and inevitable factors of international politics, will see in the League of Nations only a still-born thing or a disguised means of perpetuating the domination of certain great powers over the rest of the world and assuring forever the maintenance of the present status quo. But for those who base their confidence upon the fact of the ever-greater evidence of the evil of war and upon the increasing repulsion of peoples to recourse to violence in relations between states, the League of Nations will appear at the very least as a serious attempt to open to international politics the road to a better future.

Despite all of these defects, however, the Federal Council advised the immediate entrance of Switzerland into the League of Nations for two main reasons besides the one just given,—of its being capable of right development with a proper spirit on the part of those conducting its affairs. These two main additional reasons were as follows :

First, the consideration that in the geographical position of Switzerland—surrounded on all sides by states which had been belligerent in the late war, part of them victors and part vanquished, all of the victors now members of the League and the vanquished waiting impatiently to become such—it was only a question of time as to the entrance of Switzerland into the League. That is, Switzerland would be obliged, sooner or later, for her own protection—maybe for the maintenance of her own existence—to become a member. Such being the case, the question reduced itself to the consideration whether it would be for her better interest to become an original member, under the invitation extended to her by the signatories of the Treaty of Versailles, or a subsequent member through election by the Assembly. As we have seen, any state subsequently chosen to membership by the Assembly must "give effective guarantees of its sincere intention to observe its international obligations" and must "accept such regulations as may be prescribed by the League in regard to its military, naval, and air forces and armaments." In other words, if Switzerland should decline to become an original member of the League, she would probably give offense to the original members by the refusal of the invitation, be obliged later to join it, and then submit to a regulation of her armaments from which the original members were exempt. Stated thus, no further argument was necessary to convince any man of fair intelligence that it was for the better interests of Switzerland to become an original member, through immediate acceptance of the invitation accorded her.

The other chief reason, though mentioned quite distinctly by the Federal Council in its message of recommendation, was not dwelt upon with so much frankness,—in fact, was rather disavowed as carrying great weight with the Council, —although it is very evident to the unbiased student of these

events that it had much greater influence over the Council than this body cared to reveal. It was the great inducement held out by the League in its proposition to make Geneva the capital of this international organization of Europe at least, if not of the whole world. The Swiss jurists refer to the fact that while the signatories of the Versailles document had fixed upon Geneva as the seat of the League of Nations, nevertheless, in the same article of the Covenant, they conferred upon the Council of the League the power, by unanimous vote, to change the seat to another place. The Swiss Federal Council did not draw from this the conclusion, but left it to be inferred, that the Council of the League might be expected to make use of this power if Switzerland should fail to become a member of the League under the invitation it had received to an original place in the same, with the privileges which such membership carried. Then, in a statement of nearly a thousand words, they set forth the advantages which might be expected to accrue to Switzerland from having the offices and buildings of the League, the international bureaus, and the residences of the functionaries within her boundaries, and from the international protection which such buildings, residences, and personalities would enjoy. They dwelt particularly upon this latter point as calculated to secure to Switzerland the perpetual continuation of her neutrality in war although, as a member of the League, she could be legally called upon to become belligerent.

Acting upon the advice of the Federal Council, the Federal Assembly voted in favor of the acceptance of the invitation to enter the League of Nations immediately and without reservations of any kind. While it did not approve of the proposition of the Council to make the Covenant of the League formally a part of the Swiss Constitution, it nevertheless referred the ultimate decision of the question of becoming a

member of the League to the same sovereign power which stands back of both the Federal Council and the Federal Assembly, the power that amends the constitution,—namely, the Swiss voters, both as a whole and as separated into their local organizations, the cantons; with the result that they adopted the proposition in the manner and with the required majority necessary to the adoption of an amendment to their constitution. In Switzerland, thus, the Covenant of the League of Nations rests upon the same authority as the Swiss constitution,—is thus virtually adjoined thereto, if not formally incorporated therein. It is difficult to perceive any substantial distinction between the two situations. The officials of the League are therefore Swiss officials when doing anything affecting the rights, interests, or policy of Switzerland; and the bearers of authority and power under the Swiss constitution may be considered as approving whatever the organs of the League may do, so long as the Swiss representatives in the Council and Assembly of the League do not, by authority of the sovereign in the Swiss state, veto the same or give notice of Switzerland's secession from the League. The Swiss state has, thus, simply vested the management of its foreign affairs, in part, in the organs of the League of Nations, and itself holds continuous control over them in the manner just mentioned and may mediate their relations to the organs of the domestic government of the republic, by way of amending the constitution.

The situation and surroundings of the United States of America were, however, quite different from those of the little European republic. A great national state (especially from the standpoint of the geographical and economic requirements), with a territory as large as all Europe this side of the Ural Mountains and river; in which everything absolutely necessary to the life and prosperity of its people may be produced;

inhabited by a hundred and twenty-five millions of the most capable, self-reliant men and women on the face of the earth; with one official language, one general code of law and custom, one system of government, and one understanding as to the source of law, government, and liberty; separated by broad oceans from any other considerable power; assured by the members of the League that a place as an original member of that body, with permanent representation in both the Council and the Assembly, would be reserved for the great republic forevermore; with an article (XXI) in the Covenant of the League expressly declaring that nothing in the Covenant should "be deemed to affect the validity of international engagements such as treaties of arbitration or regional understandings like the Monroe Doctrine"; and with no ambition to be the seat of the government of the League,—it ought to have been anticipated from the first that the Swiss action would be no certain criterion for that of the United States of America. Those who thought that it might be, or hoped that it would be, were—the President of the United States himself included—destined to suffer a grievous disappointment.

It will be remembered that the Treaty of Versailles, which contained the Covenant of the so-called League of Nations, was concluded on June 28, 1919. On the tenth of the following month the President of the United States submitted the entire document to the Senate for ratification. The Constitution vests the president with the "power by and with the advice and consent of the Senate to make treaties, provided two thirds of the senators present concur." The procedure in the Senate when engaged in such work is to regard the treaty as an executive recommendation; to submit it to the proper standing committee for examination and report; on receipt of the committee's report, to resolve itself into a Com-

mittee of the Whole House for considering the report and deciding upon its recommendations; and, lastly, to discuss and vote upon the decisions reached by the Committee of the Whole House in the regular session of the Senate, under the general rules of the body.

It will be observed that in making treaties the majority necessary to give legal force to the president's propositions is prescribed in the Constitution, and that the requirement is two thirds of the members present in regular session,—a legal quorum to do business, of course, being present,—while in the Committee on Foreign Affairs of the Senate, and in the Senate itself when acting as a Committee of the Whole House, the questions of quorum and majority are left to the Senate itself to determine, under its power to fix its own rules of procedure.

This distinction, or difference, makes it quite possible that the Senate may, as a Committee of the Whole House, favor things which as a body in regular session it would not approve; and so it turned out in this case. A number of the most prominent statesmen in the Senate—more than one third but less than one half—conceived of the Covenant of the League of Nations as an unnecessary and an objectionable part of the treaty, while the President and his followers pronounced it to be the "heart" of the instrument and would not consent to its removal therefrom. They could not deny that it impinged upon, not to say trenched upon, the sovereignty of the United States. They undertook, however, at every stage of its consideration (in the Committee on Foreign Affairs, in Committee of the Whole, and in regular session of the body) so to change, modify, and interpret the provisions of the Covenant as to make it appear harmless to that sovereignty. They succeeded in the bodies where the necessary majority for decision was the ordinary number; but when it

came to the extraordinary two-thirds rule prescribed by the Constitution for the final act, they lost out twice and have not had the heart to make any further effort. In fact, after the second failure—which occurred on the nineteenth day of March, 1920—a motion to reconsider, requiring only an ordinary majority for passage, could not be adopted; while the motion of Mr. Lodge to instruct the Secretary of the Senate “to return to the President the treaty of peace with Germany signed at Versailles on the twenty-eighth day of June, 1919, and respectfully inform the President that the Senate had failed to advise, and consent to, the ratification of the said treaty, being unable to obtain the constitutional majority therefor,” was carried by a vote of forty-seven yeas to thirty-seven nays.

This action of the Senate occurred, as above indicated, on the nineteenth day of March, 1920; and judging from the attitude of the press throughout the country and from the national elections, wherever the question has appeared to be in issue, one can hardly reach any other conclusion than that the voters of the United States approve, by large majority, the Senate's attitude.

It is quite evident that the people and the government of the United States of America do not feel prepared to become connected with the League of Nations as at present constituted,—do not feel that the Covenant of this League is any proper corrective of the world situation or of the European situation as left (or even found) by the Treaty of Versailles of June, 1919. A little careful reading of the discussion of the provisions of this Covenant in the Senate as a Committee of the Whole House will reveal the fact that one of the chief reasons, to say the least, for this attitude was (and still is) the character of the membership in the said League. While being entitled by its creators and members a “League of

Nations," no profound study of its elements and structure was necessary to show that this name is a misnomer,—that, in fact, very few of the members of the League are genuine national states, but are either world empires (that is, formerly national states, or something like the same, at present holding sway over vast colonial possessions, acquired chiefly by war and conquest) or are mere racial states, or fragments of national states, or populations unnaturally organized as sovereignties in this age of political civilization and development. A more descriptively correct wording would be "League of States," although this would still not be entirely exact, since the League may contain the colonies and dependencies of any member as full members, provided only that they are locally autonomous,—a theoretical situation which opens up an almost boundless realm of possibilities for intrigue and double-dealing.

As has been several times pointed out already, the so-called League of Nations is of highest importance, in the present period of the world's civilization, as a European institution rather than as a world institution; and its greatest problem, at least at the present time, is to furnish the antidote to the Balkanizing (or further Balkanizing) of Europe produced by the recent general war and the settlements following thereon. To do nothing, then, for connecting the political caricatures which disfigure Europe with the larger states occupying the same national unities with them, but, instead, to break up some of these larger states into national fragments from the point of view of one or another of the elements composing a genuine national structure, is a very poor recommendation for the "League of Nations," so-called, to the favor of North Americans who fought through a war to prevent the Balkanizing of this continent,—a war as long and relatively as intense as the one from which Europe is now striving to recover

(with not so great promise of success, however, because of the directly contradictory outcome).

It need excite no wonder that down to the present moment this country has given the cold shoulder to the Covenant of the League of Nations. To an old citizen of this national union, whose memory and experiences run back to the Civil War for the maintenance of national sovereignty here, and who also for three years (from 1870 to 1873) viewed face to face the same effort made by the Germans and Italians for the political nationalization of Europe, the wonder, rather, is how this country ever came to be involved in the recent great European struggle at all, and, if so, why upon the side of the Balkanizers of Europe instead of upon that of the genuine nationalizers. If this was destined to be, however, it was altogether fitting that it should be, as it was, under a Southern Democratic administration at Washington.

While penning these lines, the author recalls quite vividly pictures of several of the most crucial experiences of his now no longer short life, two of which it will be pertinent to relate in this connection with some detail.

The scene of the first of these was the camp of the fatigued and discouraged Union forces just outside of Louisville, Kentucky, after their retreat from northern Alabama and southern Tennessee, following the Shiloh campaign and the flanking movements of the Secessionists under the direction of their able leader Braxton Bragg; and the date was the twenty-third day of September, 1862. It was then and there, amid such surroundings, that the world-famous Emancipation Proclamation of Abraham Lincoln, signed by him as commander in chief of the army and navy of the United States of America, was read to the troops composing the divisions under the command of General Don Carlos Buell, then protecting the states of the Union north of the Ohio River against

entrance and pillage by the rebel soldiers. There were at that moment thousands of men in General Buell's army whose homes and families were in Missouri, Kentucky, and Tennessee. Some of them were slave-holders, and many more of them were the sons of slave-holders. Nearly all of these men had taken service in the Union army under the representation that the war on the part of the United States government was not being waged for the purpose of freeing the slaves but simply and wholly for the maintenance of the Union, while the slavery question would be dealt with later, after the return of the representatives from the seceding States to the Congress of the United States and the reëstablishment of the administration of the Federal government in those States. They were therefore shocked, not to say dazed, by this act of what appeared to them bad faith, since they viewed emancipation, at the moment, not entirely nor principally from the standpoint of property loss but almost exclusively from that of slave insurrection and the consequent violation of their mothers, wives, and sisters and the murder of their fathers and grandparents. The question was thus thrust upon them whether they should remain true to their oaths as loyal soldiers of the Union or should desert the army, return to their homes, and endeavor to shield their own loved ones against the ravages of the brutes and savages of the black race. It was one of the most trying questions which loyal, honorable, and brave men have ever been called upon to face, endure, and resolve.

It will probably never be known how much the anxiety, uneasiness, and discontent thus produced among the Kentuckians, Tennesseans, and Missourians in the Union army—on the average, among the very best soldiers in it—contributed to the meagerness of the victory at Perryville on the eighth of the following October; but one thing is known to

a few of the survivors of those nerve-racking, heart-rending experiences, namely that when General W. S. Rosecrans supplanted Buell in the chief command of this army, at the end of the year, and established his headquarters at Nashville, Tennessee, a delegation of these men waited upon him and pointed out to him the dilemma in which they had been placed by the Emancipation Proclamation,—with the female and infant and aged male members of the families to which they belonged exposed to rape and murder,—and received from him, in reply, the illuminating, though in some respects very disquieting, statement that he had participated in counseling the President to issue the Emancipation Proclamation immediately as a military measure, and by virtue of his authority as commander in chief of the army and navy, and that all the soldiers of the Union must regard it and obey it as an absolutely necessary act of military strategy, made such chiefly by the very unsatisfactory condition of our foreign relations, with Great Britain building warships, furnishing munitions, and permitting and procuring loans for the rebels, and France not only doing the same (in part at least), but also maintaining an army of more than one hundred thousand men under the command of her best generals just across the Rio Grande, ostensibly in support of the Hapsburg emperor Maximilian on the throne of the Montezumas, which in itself was a most flagrant violation of our Monroe Doctrine, but which meant the conquest (or “reconquest”) of California, New Mexico, Texas, and possibly Louisiana by France, unless the armies of the Union should win a speedy and very decisive victory over those of the rebel Confederacy. He then added very significantly, almost slyly, for their comfort and that of those whom they represented,—and trusting to their honor for secrecy for the moment,—that he was pleased to find that the Proclamation had produced in their minds such

a chief impression, since this was the very view which the instigators of it had hoped and intended to arouse in the minds of the rebel commanders, who would, in consequence of it and under the impression effected by it, probably weaken their front to protect their own family firesides and could be then more surely and easily beaten on the battlefield. Those of us who lived then and there and took part in these events know that this was exactly what happened on the field of Murfreesboro, or Stone River, during the first days of January, 1863, and opened the way for Sherman's march through Georgia to the sea.

Some twenty years later the author related this experience to Mrs. Jefferson Davis, the highly esteemed widow of the president of the short-lived Southern Confederacy; and she, in the sudden excitement of her momentary interest in the story, exclaimed, "Yes, the British and the French were on our side; and Mr. Davis always said that but for the Germans of Missouri, Illinois, and Kentucky we would have won the fight, and that he hoped to live to see the day when they would get their deserts in their home land for their attitude in our domestic conflict."

The second picture which is pressing at the moment with such point and clarity upon his memory while trying to explain to himself the involvement of the United States of America in a war waged on European soil, though very far removed from the first in time, place, and surroundings, is as closely connected otherwise as two great events in the life of any one man can well be. The stage was the Aula of the University of Berlin; the date was the twenty-seventh day of October, 1906; and the audience, assembled to participate in the inauguration of the Roosevelt Professorship of American History and Law as a permanent chair in that greatest of the world's universities, consisted of Their Majesties the

Emperor and Empress, the princes and princesses of the imperial royal house, the ministers of state of the German Empire and the kingdom of Prussia, members of the Reichstag and the Landtag, the faculties of the university, and delegations of students from the several branches of the great institution. The author of these lines had been selected by the endower of the chair, Mr. James Speyer, President Roosevelt, whose great name gave to it its highly befitting title, and the authorities of the University of Berlin and of Columbia University in the City of New York to pronounce the inaugural address and to occupy the chair during the first term of existence of this new and novel foundation.

He began this address by reading a letter of greeting from President Roosevelt to the distinguished audience, which in concise English translation ran as follows:

The White House, Washington

October 12, 1906

My dear Professor Burgess:

Through your highly esteemed mediation I desire to extend my most cordial greeting to the University of Berlin. The historical friendship, first between Prussia and the United States, and then, after Prussia founded the great German Empire, between that mighty empire and the United States, has never been broken, never been in the slightest degree disturbed. This friendship had its beginning in the mutual high esteem and good will which obtained between Washington and Frederick the Great, and was strengthened and solidified by the fact that Prussia alone, of all the European powers, showed itself willing to enter into commercial relations with us in the period of our want and weakness, during those critical years between 1783 and 1789. Already during the colonial period of our history there existed a large German element in our population, and throughout the years of our Revolution men of German birth and extraction rendered us great and important services both in peace and war. Steuben drilled the Revolutionary

army, and Mühlenberg was the first Speaker of the House of Representatives in Congress. Since the Revolution there has been an almost uninterrupted immigration of Germans into the United States, which has proved itself of the very highest importance in the settlement of our northwestern territories. The men of German birth and extraction were with practical unanimity devoted, body and soul, to the Union and hostile to slavery. Through their powerful aid the Northwestern territories were developed into free States of the Union,—States which formed the very heart of the Union.

At the outbreak of the Civil War we have to thank the men of German birth and extraction that Maryland, Missouri, and even Kentucky remained true to the Union, and we must never forget the services which they rendered us, both in deed and counsel, during this fearful period.

Since the Civil War the constant flocking of students from the Northern States of our Union to the German universities has been one of the most remarkable and important manifestations in our educational life; and it is one of the most significant facts of our American civilization that the sons of our republic, educated at the German universities, now direct and control the system of higher education in our country.

All of these facts and circumstances have exerted a most powerful influence in bringing about the exchanges in education and culture between these two countries, which now find their culmination, so to speak, in the professorship whose inauguration, my dear Professor, has been confided to you.

With renewal of my most cordial greeting to the university, and with best wishes for your success and that of your pupils, I remain,
very truly and sincerely

Yours,

Theodore Roosevelt

The enthusiasm caused by these words of greeting from the President was so great, so genuine, and so generous that the Emperor felt impelled to rise from his seat and propose the following spirited response to be transmitted to the President:

Fellow students, let us give emphasis to the gratitude just expressed in such eloquent words by grasping the right hand of friendship extended to us from America and by joining in three hearty cheers for the man who is the incarnation of the noblest qualities of his people, President Roosevelt—Hurrah, hurrah, hurrah!

And when at the close of these memorable exercises the chief characters of this remarkable assembly gathered around the speaker to extend their welcome and express their satisfaction with the address, and especially with the letter of greeting from the President, a high personage among them put the crucial question to the speaker whether in his opinion there could ever arise a misunderstanding between the United States of America and the German Empire.

The speaker had not anticipated any such question at that time, in that place, in such presence, and amid such surroundings, and was totally unprepared to answer; but after a moment of painful hesitation there came into his memory, like a flash from the cannon on the field of Murfreesboro, the picture of the German assistance, forty-five years before, in holding Missouri and Kentucky for the Union and in winning that great and decisive victory, so graphically described by President Roosevelt. He answered, at first with much seriousness, that in view of the undisturbed friendliness between Germany and the United States at the most critical moments and during the most severe tests in their history and the world's history, as voiced by President Roosevelt, it did not seem possible for any differences of a threatening nature to arise; but—not at all himself appreciating the ominous warning he was giving—he continued more facetiously (in fact, almost jocosely) that in case a Southern Democratic administration should ever get back to Washington, it might be well for Germany to keep both eyes open and both ears alert, for in such a case, in addition to *revanche pour* Sedan and

revanche pour San Stefano, Germany might possibly find herself face to face with something in the nature of *revanche pour* Appomattox. Little did the speaker of these words think, not once did he imagine, not even did he dream, that in less than seven years from that date such an administration would be seated in the national White House in Washington, and that President Roosevelt himself would have played a chief rôle in bringing it there. Such, however, is the irony of history.

After such pertinent and significant experiences, however, it is hardly supposable that the readers of this book will misunderstand the view and feeling of the author that our participation in the European war of 1914-1918 on European soil was brought about more fittingly, at least more explicably, under a Southern Democratic administration at Washington than it would have been under that of any other party; and that likewise it was more fitting—nay, altogether so—that the Republican party, the great national party which had saved North America from Balkanization during the last half of the last century, should, rather than any other, have regained its reason before it was too late and have refused permanent involvement in the internal affairs of Europe, which the ratification of the League of Nations would very probably have produced,—an involvement that could result quite naturally in one of two ways, namely, either in an encroachment by the League on the sovereignty of the United States or in the assumption of imperial powers over the other members of the League by the government of the United States.

Should neither of these things come to pass, then is there only one other conceivable result, namely, the Balkanizing of North America—unless the League's government is, and is to remain for a long time to come, merely a debating society. This latter possibility appears from the reflection that the

Covenant of the League is not that of a league of *nations* but, more correctly, a league of *races* or *racial states*, about every one of which races is represented in the population and citizenship of the United States of America, which today is a vast ethnological conglomerate forming a national state much more pronouncedly upon the principles of geographic and economic unity than upon racial uniformity. As has already been pointed out, our ethnic unity is a consensus arrived at by the racial varieties upon our territory through a compromise of racial views, habits, and traditions. It is therefore philosophical rather than physical, and to arrive at it requires the ability on the part of our political philosophers and statesmen to appreciate the points of view of all the races concerned in regard to every important public question, and to reach down in their thought to the very foundation principles upon which all racial habits, customs, and aims are based. This is a severe requirement, it is true. There is nothing rarer than a correct knowledge of race psychology, and it is not too much to say that it does not exist among the leaders of political thought and action in this country today. Such being the case, should we become a member of a world supersovereignty in a political sense, we should in all probability be drawn into conflicts between races abroad who would be represented in our own citizenship or population, and the foreign questions leading to those conflicts would become questions of our own internal politics. In other words, under the supposed situation all foreign wars, or at least most of them, would tend to become internal struggles with us. Our ignorance of the race and national psychology of foreign peoples would inevitably throw us back upon feeling instead of reason in dealing with these foreign questions; and feeling leads to partisanship rather than to impartiality, and partisanship to intolerance and persecution, and these to

rebellion, which usually results either in anarchy or despotism,—temporarily, at least.

It is not difficult to divine which of these alternatives the government of the United States of America would embrace. If the political history of this country teaches anything, it is that between the Atlantic and Pacific oceans, the Gulf of Mexico, and the line of the Great Lakes no two political sovereignties will be tolerated, and that the government of the United States will suppress rebellion and anarchy at any cost, even at the cost of individual liberty itself. The menace to this country of membership in the so-called League of Nations, as it is now constituted, is in being impelled thereby in the direction of the development of imperialism in its organic law.

The Civil War of 1861-1865, the war with Spain of 1898, and the involvement in the late European war have so transformed the fundamental principles of sovereignty, government, and liberty, so changed the very spirit of the people among leaders and led, that only the occasion and the man are needed to come into conjunction in order to bring to realization in fact—no matter under what name—a genuine Cæsarism of the first order, both in quality and extent.

The effect of the Civil War and of the war with Spain in this direction was not so manifest. For while the Civil War, through the demoralization of the suffrage over half the Union, worked toward Cæsarism, on the one hand, it operated, through the broadening and nationalizing of civil liberty, toward the directly opposite result, on the other; and the Spanish War was too short and required too moderate exertion to make the strain of it felt on the constitutional structure of the country to such a degree as to be generally manifest. Nevertheless, through these experiences the compass of the ship of state was pointed, its sails were set, and its fires lighted for the great adventure; and by the rupture of

the old party of the Union in 1912 it got its captain and its crew, composed largely of the men, and the descendants of the men, who still carried in their hearts some traces, at least, of the spirit of revenge, not only against the foreign land whose sons had helped so mightily to protect this nation against the secessionist movement of 1861, but against the Union itself as so protected and preserved.

The first thing for this new democracy, now so unexpectedly in possession of the national government, to do was to get a stronger hold upon the purse strings of the nation, and especially upon the wealth of the richer classes of its citizens, through an unlimited power to tax. The leaders of the Cleveland democracy had already, twenty years before, come upon the idea of an income tax, classed under the category of a duty, impost, or excise (as expressed in the language of the Constitution when fixing the limitations on the same), whereby they might levy and collect such a tax under the limitation imposed on duties, imposts, or excises—namely, uniformity throughout the country—and so manipulate the same by means of a sliding scale of rates as to practically nullify the limitation and bring the mobile wealth of the country more completely within the grasp of the government. The Cleveland democracy had tried this in 1894, and had been foiled by the ruling of the Supreme Court of the United States in the case of *Pollock versus the Farmers' Loan and Trust Co.*, decided in May of the following year, that an income tax in the United States is a direct tax and therefore subject to the limitations placed by the Constitution on this class of governmental demands, one of which is that it must be levied according to numbers, each person, in other words, paying the same amount, as in the case of a poll tax. This, however, would not enable the proletariat to get at the wealth of the millionaires through the government, and no attempt

was made to try to collect an income tax as a direct tax. There was, however, one way left to attain their purpose fully, and that was by so amending the Constitution as to remove the limitation (imposed on direct taxes generally) from income taxes, without, however, classing these under customs, duties, excises, etc., and making them subject to the limitations imposed on this class. When, now, the Wilsonian democracy came into control of the national government through the split in the Republican party in 1912, this was accomplished; and the President and Congress were enabled, through the unlimited power to tax incomes, to lay hands upon the whole disposable wealth of the country.

The next step taken in the transformation of the Constitution from the system of limited republicanism toward that of despotic imperialism in government was effected by the undertaking of foreign war on the greatest scale known in human history. The declaration of war in April, 1917, followed by the "Selective Draft Act"—as it was termed—of the following month, did the business most effectively. The process was briefly as follows: Let the President and Congress declare foreign war—which they may do at any and all times, whether or no there is any enemy in sight—and perpetuate it, which they may always do, no matter whether or not any enemy has appeared. Then enact a statute of Congress establishing universal military service, whereby every human being may be put under the rule of military law,—a law without constitutional exemptions or limitations in behalf of the individual citizen or subject; and then, by the "Espionage Act" (more properly termed the Exaggerated Treason Act), stop all criticism or review of the government's foreign policy, so as to prevent any revolution against it among the people or even any movement to elect a new Congress or president upon this issue.

For all this we had ample precedent during the late war,—precedents formed and hardened by presidential rescripts, congressional statutes, judicial decisions, and even constitutional amendment,—so far as lawful authority is concerned, to equip the government of the United States as thoroughly for the execution of an imperial policy of foreign conquest and of the domestic autocracy connected therewith as any other now existing in the civilized world.

It is certainly not very difficult to divine what might be the result of giving a government—so equipped legally for mobilizing the wealth and war power of a country such as this for carrying out its policies—opportunities which membership in the League of Nations as now constituted would furnish, especially if those policies should be under the initiation and direction of a Napoleonic ambition in the White House in Washington. Even a Wilsonian ambition came dangerously near to involving this good land in commitments and entanglements which are generally regarded now to have contained possibilities, at least, of great menace to its peace, prosperity, and advancement in civilization.

And yet, and despite all this, one cannot help feeling that there may be a bright side to this picture; and if so, we must not look altogether nor always upon the dark side. Suspicious as one may confess to be regarding its probable dangers, much as one may sympathize with the writers of the Ferrero school, thoroughly as one may approve of the attitude of our government toward it, still one is haunted with the idea, maybe the fancy, that with good will among men the Covenant of the League of Nations may be so transformed, gradually and continuously, as finally—and at no very far distant day—to make out of it something which very few, if any, of its progenitors designed it to be, namely, a league of genuine national states each fully understanding the psychology of the

others and all laboring together to work out a world philosophy, and after that a world state that will evolve a code of universal law so thoroughly expressive of world reason as to give it such compelling power over the intellect and the conscience as to require only a minimum of physical force for its execution; and that it may be the mission of this great land of ours, which has proved itself the home of liberty, order, and prosperity to members of all races, religions, and nations, to bring about this great and glorious result.

That this may be accomplished, however, requirements of no easy nor ordinary nature must be fulfilled. We cannot pretend to indicate all of them at this time or in this place, but will endeavor to point out a few of the more pertinent ones with some distinctness and exactness. In the first place, and throughout, the designation of the League as a mere debating society, although intended as a reproach, must be seen to be its greatest recommendation. Every important subject must, before a wise decision regarding it can be arrived at in this age of truth-finding by the processes of human reasoning, pass through a period of thorough discussion from every necessary point of view. That there should be somewhere an assembly of men representing the ideas or notions or even fancies of the different nations, peoples, or states of the world is a distinct advantage of a very marked nature in the advance of civilization. It assures that conservatism in progress which means steady, continuous advance, instead of the zig-zag course of radicalism today and reaction tomorrow.

The trouble with the League of Nations today is that it is not enough of a mere debating society,—that it goes too far in the direction of laying a claim to sovereignty, in certain respects, for the conditions of the age. At any rate, we may set aside the objection to it on the score of its being simply a deliberative body as of no weight, and proceed to

the consideration of the next capital requirement in the reform of the League to make it safe for the United States of America to assume membership therein.

This is nothing less, as it appears to us, than a transformation of the personnel of its representative organs. These are now composed too largely of the governmental officials of the different states within the League. The Council, the really effective body, is, as we have seen, entirely so constituted. Now, such persons do not feel themselves free enough in debate to arrive at thorough results in the investigation of social and political truth. The men occupying public place and office in the home governments of the members of the League are too much concerned about their own political fortunes and careers to make the best investigators in the great work of finding the way to world organization, world sovereignty, and world law. This is the period in the League of Nations for the political philosophers, historians, jurists, and economists to function,—not for the officials of the governments of the several members thereof. Their time will come later, after the constitution and membership of the League shall have been definitely determined. It will, of course, be no easy matter to arrange the selection of a proper personnel of the organs of the League for its formative period; but it can be done, provided only there is the good will on all sides for its accomplishment, and without that nothing can be effected anyhow. Let it be understood on all sides that these organs should be more of the nature of an original constitutional convention than of a legislature, and the work will be already half done.

What is now termed the Council in the organization of the League would be eliminated or, at least, suspended in its operation for the present. It is the representation in this body which is, at this time, the chief bone of contention between

the members with permanent seats and those having only temporary seats in it. It is here that the distinction between the "great powers and the lesser powers" is kept up, to the constant irritation of the latter and with the interminable waste of time and energy in the disputes regarding the application of this classification in detail. It has already provoked the withdrawal of one European power from the League, which feels itself deeply humiliated by the existing discrimination.

It is easy to understand the difficulty of the situation. It is simply that the political divisions of Europe were, before the late war and the Versailles revision of them, in a number of respects unnatural, though working toward a greater naturalness. The Versailles arrangement made these divisions much more unnatural. The Covenant of the League, with such an unnatural basis of membership, could only draw thus an artificial line between the "great powers" and the "lesser powers,"—if such a distinction in the organization of the League had to be maintained,—because such a line could not be drawn anywhere without a more or less invidious distinction being made between the least of the greater powers and the greatest of the lesser powers; and should the line be moved to take in these greatest of the lesser powers, it would arouse dissatisfaction among a still greater number of the lesser powers, who would be thus brought nearer to the line of discrimination between them and the revised list of the greater powers, and so the contention must and would go on, to the monopolizing of the time and strength of the League's representatives and the maintenance of ill will between them.

Regarding now the organization of the League as in its formative period, and organizing the representatives of its members in a single body, its nature as a constitutional convention would more readily appear, and any necessity, or

fancied necessity, for a distinction between greater and lesser powers, in the distribution of the representation, be forestalled at the outset.

Of course, the root of the trouble is the fact (to which reference has already been several times made) that the political lines of Europe do not coincide with those of physical geography and economic unity in all cases, or even in most cases,—less so than for half a century before the arrangements of the Versailles instrument,—and that it is the political lines alone that are stressed in determining membership of the League. In other words, that the League is not a league of genuine nations but of a few states approaching that status, with more that are racial states and still others that are simply caricatures. From the point of view of the subject treated in this volume this is a particularly serious consideration. It signifies that only in a few cases has a genuine national consciousness of truth and right been reached and that these cases are rendered half worthless by the discordant notes proceeding from the others. The political air is too full of static to permit of an effective broadcast from any station.

If, now, the so-called League of Nations will suspend the activity of its Council for the present and transform the personnel of its Assembly as above indicated, and the Assembly will envisage itself as being of the nature of an original world-constitutional convention, destined for years still to come to operate without any shadow of sovereignty or governmental power but functioning only as an institute for free investigation and suggestion, then it is certainly conceivable that the United States of America, with full understanding of the fundamental defect in the organization of the League,—namely, that it is a premature attempt to form a league of nations before its members have fully become, or even mostly

become, genuine national political entities,—and entertaining the well-determined purpose of insisting upon the curing of this great defect by the parties concerned preliminary to investing the organs of the League with any sovereign or governmental power, may safely accept membership in the Assembly of the League as a mission of holiness and perform therein a work of world piety; but under any other conditions and with any other primary purpose in view, especially under present conditions, entanglements, and aims, there is great reason in the claim that the United States can serve the best interests of humanity and civilization by persisting in its attitude of independent aloofness and of unintimidated, uncompromising criticism both by word and example.

In other words, the Covenant of the League of Nations, with its present organization, aims, and *modus operandi*, is no antidote or corrective for the errors and defects of the Versailles instrument; but it is conceivable that it might be made such with the exercise of great wisdom, abundant good will, and indefatigable patience, and the United States of America is the only great national state in the world today that appears to possess the men and the means for bringing this much-to-be-desired result to a happy and successful consummation.

CONCLUSION

It is always helpful, at the end of any treatise or discussion, to sum up as briefly and tersely as possible the conclusions arrived at.

In the first place, we have felt obliged to give the chief term in the title we are analyzing, the word "law," a somewhat broader scope than its definers have usually accorded it. As we have seen, the limiting adjectives employed by the great jurist whose book on the common law had been the classic for centuries on both sides of the Atlantic are unnecessary and misleading. For example, Blackstone's dictum that law is a rule of *civil* conduct presupposes too far that civil conduct is a fixed concept, an a priori principle, innate in every mind; while as a matter of fact a long period of historic development is required to differentiate civil conduct from other kinds of conduct,—other kinds just as important and necessary to the higher ends, especially, of civilization. What practically distinguishes law from other rules of conduct is nothing so philosophical in its nature as would be indicated by such adjectives as "civil," "moral," and "religious." Law is a rule of conduct, obedience to which is enforced, if necessary, by the infliction of a *physical* penalty for disobedience or nonobedience. The nature of the penalty by which it may be enforced is what distinguishes it from a rule of morality or from a religious tenet.

In the second place, the legitimacy of the source of the rule of conduct having the force of law is essential, but in Blackstone's definition too limited and precise. He makes it the

supreme power in the state,—sovereignty. It is that, but it is more than that. It is also any organs created by sovereignty, and vested by it with the authority to make rules of conduct and to enforce obedience to them by ordaining physical penalties for disobedience of the same and providing for their execution,—that is, the government.

These organs may be one or a small number or a greater number, owing entirely to whether the state (the sovereignty) has created and invested one or more organs with such authority; but the rules of conduct ordained and prescribed by any and all of them have the same legitimacy in source as do those enacted by the sovereignty itself, provided they are upon the subjects and within the limits designated and fixed by the sovereignty itself. This question, whenever arising, must be determined by the sovereignty itself or by some organ created by the sovereignty and vested by the sovereignty with such supreme hermeneutical authority. Hence the correct definition of the word "law," when applied to human conduct, does not require the limitation either that the rule shall be directly prescribed by the supreme power in or of the state or that it shall command what is right or forbid what is wrong. In the search for its legitimacy the student must be able to find it sustained by the sovereignty either directly or indirectly, but not always immediately; and whether the command shall be right or wrong must be determined again by the sovereignty or some organ created by the sovereignty and vested by the sovereignty with this supreme hermeneutical authority.

We feel obliged, therefore, to revise the definition of the great English jurist so as to make it read, Law is a rule of conduct prescribed by the state—that is, by sovereignty or some organ authorized thereto by sovereignty—and enforced by means of a physical penalty when necessary.

The chief problem of this little book, therefore, has been to demonstrate how men have sought and struggled to find the sovereign organ or organs out of which have proceeded the rules of conduct having the force of law, or out of which has proceeded the authority to make such,—not throughout the entire world, indeed, but only in Europe and North America, and in Europe only since the downfall of the ancient Empire of Rome, since it is here that we find the greatest fullness and certainty of historical material for tracing the evolution of the three chief topics of political science, namely, sovereignty, government, and liberty.

We saw that the human mind in its infancy and weakness turns instinctively to what it conceives as God, the source of all, and ascribes to this conception the source of all authority and law.

Logically, with this assumption of the major premise are connected several conclusions which are in the nature of self-evident truths. For example, if the source of law be God, then man can gain a knowledge of what God requires only through revelation; and after that should be understood, some human mind would be necessary to interpret the divine words in which the law may be framed. To what particular individual or individuals should that mind belong? Here was the great problem, the great strife in principle, of the Middle Ages. The Roman Catholic Church held that it was the divinely created and appointed organ for the revelation of all truth to man. The Emperor Charlemagne and his successors to the throne of the Holy Roman Empire of the German Nation claimed that they were the divinely constituted and appointed minds to whom, in turn, the revelation of truth for the government of the larger part of Europe and the transmutation of the same into law had been committed. This contradiction of authority went on for eight hundred years, to

the ruin of the claims of both parties, the emperors backing their authority with the power of physical punishment administered at the time and on the spot and visible to all, and the Pope and his cardinals and bishops backing theirs with the threat of what was far more terrible to the medieval mind, namely, the supposed punishments of the hereafter through all eternity, within control and manipulation of the Church.

While the system of the Empire looked chiefly to the power of temporal execution as giving sanctity to law, that of the papacy, on the other hand, laid just as excessive stress upon the legitimacy of the source and put forward the much more refined view that, from the nature of its source, law must be eternally right and must be obeyed because of being perfectly and eternally right, thus touching another ground of the sanctity of law, namely, the rationality of its content, reserving, however, for the supreme ecclesiastical authority the exclusive function of interpreting in highest instance the meaning and intent of the law.

Of the two systems the papal was the more spiritual and refined, and the imperial system found itself under the necessity of borrowing something from it in order to give a greater sanctity to its law than the mere power to enforce it by the exercise of physical punishments would do. The papacy always made the Empire pay for such concessions in the loss of prestige, dignity, territory, and power, until finally the emperors and their system became mere shadows, the political unity of Europe was lost, and the most unbearable despotism of all, the religious,—the despotism which denies to the subject of it the right to think freely upon the question of his own deliverance,—settled down like a black pall over the entire Continent.

Nevertheless, it was better that such order as this should remain than that anarchy should prevail. Law still had about

it some aroma of divinity,—still had a sanctity, a compelling power over the mind, conscience, and will, which meant more than the fear of physical punishment.

It required, however, three centuries of thought and action—the centuries of the Renaissance, the Reformation, and the revolutions—to bring the new principle regarding the origin of law and its sanctity to a conscious development and then to general application.

At first a prompt and, if necessary, rude halt must be called to the existing and further threatening anarchy. A few men of great organizing ability, such as the Tudors, the Bourbons, the Hapsburgs, the Romanoffs, the Vasas, the Hohenzollerns, and the rulers of the House of Savoy, came to the front and said to the advancing course of anarchy, "Thus far and no farther." The slogan was again "Might must hold until right gets ready." They organized standing armies separate from, and having no connection with, the feudal militia, upon which they could depend in a fight with this very militia. The modern world has largely forgotten the debt it owes to these men and their families for the preservation of all that was good in the ancient and medieval worlds. They held the European man firm to his course of development as the world's great man for the advancement of civilization and culture; and whether what they did is going to be improved upon by what has taken their place remains to be seen,—certainly remains to be seen from the point of view of the subject we are treating, namely, any increased sanctity of what is being put out by the new order as law.

During the earliest period of the history of the states founded by these families, order and the reign of law, as compared with the condition of the preceding era, was reëstablished; and it seemed for a time that the sanctity of the law as a spiritual force might reappear and become a prop and

power in the souls of men, in addition to the fear of the certainty and severity of physical pain. Located at London, Paris, Madrid, Vienna, Berlin, Stockholm, Rome, and Moscow, these men worked in line with the evolution of genuine national states in the territories for which nature had made them the capitals geographically and economically; and at the close of the nineteenth century we had a Europe with a national Spain, a national France, a national Italy, a national Germany, a national Sweden-Norway, and a national Britain which seemed only waiting in expectancy for the connection of the Balkan lands in the middle and lower valleys of the Danube with Austria-Hungary, as far south as the crest of the Balkans, and the extension of Greece northward to the same line, with Constantinople for its capital, in order to round out practically the continent of Europe west of the Vistula into the eight sovereignties, or national states, for which physical geography, economic unity and political history seem to have intended it.

When, thus, the twentieth century came in, it seemed to have the new answer to our question upon its lips, and so nearly spoken as to be almost audible. It was that the *national* consciousness of truth and right was the source of law—of sovereignty—in the modern state, and that a genuine *national* consciousness, from the point of view of the sanctity of law, was produced by the conjunction of the geographic and economic unities with the ethnical and political.

Upon the basis of a national mind thus created, truth attained through investigation by every individual mind capable of making it, and right attained through the reasoning of every mind capable of the process, took the place of revelation from God to man through Pope and Emperor; and the danger of anarchic results contained in the application of

such a principle was met and overcome by the requirement that when this national consciousness advanced to the work of issuing rules of conduct, and requiring obedience to them by means of physical penalties for disobedience or nonobedience,—rules which must be obeyed by persons possibly not consenting to them, as well as by those consenting or assenting to them,—then must the national consciousness effect an organization of a sovereign nature (that is, of a nature convincing enough and powerful enough to carry the mind and conscience of the mass of the people), as otherwise the power would soon be found wanting to execute law under the new political philosophy concerning the origin and sanctity of the law.

Just at the moment when the development of genuine national sovereignties on the continent of Europe seemed most promising, the interference of Great Britain in the political organization thereof, with the purpose of perpetuating the Balkanization of eastern Europe, turned the course of historical development back upon itself,—a reaction which culminated in the Great War of 1914–1918, and the breaking up of a large part of Europe into fragments upon the ethnological principle of unity (if upon any principle at all),—the weakest element in the formation of a genuine national modern state, —thus setting back the universal triumph of the real international system of genuine national states at least half a century.

The framers of this new system of states seemed aware of the urge toward anarchy contained in it from the outset, and undertook to meet and antidote the same by means of the so-called Covenant of the League of Nations, which in its prematureness and immaturity is threatening to lead to another Holy Alliance of victors to make sure of their spoils, in disregard of the interests of more than half the world. The

absence of Russia from the League and the attitude of the United States of America toward it rob it of the character of a world institution in strictness, while it is more than a European organization.

It is, however, conceivably possible, with a full appreciation of its weaknesses, so to manipulate the League—having already the advantage of establishment—as to make it an organ for the development of the nations within the League from every point of view necessary in the making of genuine national states. While working out world unity, the League may be also utilized to perfect the historical evolution of real national consciousness of truth, right, and law; and the United States of America may at some future day regard it as its own great world mission to perfect a real world unity of genuine national states.

When that day shall come, it is practically certain that a country which has already produced among its citizenry in the world of business enterprise such men as the Carnegies, the Rockefellers, the Westinghouses, the Rogerses, the Edisons, the Fords, and many others of not much less prominence, will be able to furnish the characters necessary for this great undertaking, and that they will not allow themselves to be hampered in their work by the economy of government in its appropriations but will furnish the means themselves to accomplish this crowning project of human civilization. Possibly this is the deep meaning of these gigantic fortunes which are being heaped up in this modern era of discovery and invention. The indications are not wanting already that such is the grand purpose to which they may be put. In fact, they are being so employed in considerable measure at this very moment, and, as so employed, they are setting the most superb example that man has ever placed before man in the uses of untold wealth.

For such projects of private wealth and private enterprise to succeed in highest measure, however, and without prejudice to the free participation of every individual capable of making a contribution to the discovery of truth and the advancement of civilization, it must be clearly understood and kept continually in mind that the broadest possible freedom of thought, speech, and the press compatible with the public peace and order is the absolutely indispensable condition of any sound advance in the evolution of the new philosophy of truth, right, and law, whereby that sanctity may be won back for law enjoyed by it as divine command and lost by it through the upheavals of the Renaissance, the Reformation, and the revolutions. Any mistake upon this point will be fatal to our modern civilization both in fabric and foundation. Our modern political philosophy, like our modern science generally, must find a place for Luther, Calvin, and Zwingli as well as for Charles V and Leo X; for Cromwell as well as for Charles I; for Voltaire, Rousseau, Danton, and even Robespierre as well as for Louis XIV, Louis XV, Louis XVI, and Napoleon I; for Mirabeau, Thiers, and Gambetta as well as for Charles X, Louis Philippe, and Napoleon III; for Paul Kruger, Eamon de Valera, Bernard Shaw, and Lenin as well as for Victoria, Edward VII, George V, and Mussolini; for George Washington, John Hancock, and Samuel Adams as well as for George III; for Jefferson Davis and Robert E. Lee as well as for Abraham Lincoln, Ulysses S. Grant, and William Lloyd Garrison; yes, for Robert M. La Follette and Eugene Debs as well as for Theodore Roosevelt and Woodrow Wilson.

That part of the human race of which we are treating in this little volume has passed its childhood and its adolescence, has passed all eras during which it is natural that it should be led by a few men claiming the authority therefor through

special divine revelation, all eras when an exaggerated patriotism can claim to be even a virtue,—certainly all where the absence of it can be considered a crime,—and has come into the age when real men, heroes, must meet, stripped for the fray, in the stadia of Minerva, for the free contest of the human reason out of which may emerge those new principles of truth, right, and law whose legitimacy of source and rationality of content will be so manifest to so many as to require but a minimum of physical force to give them the sanctity of something like divine command.

Then shall the dream of the statesman-poet find its realization, as expressed in those clarion tones that have been for decades ringing down the avenues of time:

What constitutes a state?
Not high-raised battlements nor labored mound,
Thick walls nor moated gate,
Nor cities proud with spires and turrets crowned,
Nor starred and spangled courts
Where low-born baseness wafts perfume to pride,
But men, high-minded men,
Who their duties know,
But know also their rights,
And knowing, dare maintain them.



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